

PAGE 1 of 330 PageID 3303

VOL 3 OF 11

No. 74851

PATRICK HENRY MURPHY, JR.

APPELLANT

CAPITAL MURDER

OFFENSE

DEATH

PUNISHMENT

DALLAS

COUNTY

CONTENTS: RR VOLS. 10 - 15

REPORTER'S RECORD

74851

VOLUME 10 OF 61 VOLUMES

TRIAL COURT CAUSE NO. F01-00328-T

STATE OF TEXAS * IN THE DISTRICT COURT
VS. * DALLAS COUNTY, TEXAS
PATRICK HENRY MURPHY, JR. * 283RD DISTRICT COURT

INDIVIDUAL VOIR DIRE

FILED IN
COURT OF CRIMINAL APPEALS

MAR 9 2004

Roy C. Bennett

On the 4th day of September 2003, the following
proceedings came on to be heard in the above-entitled and
numbered cause before the Honorable Vickers L. Cunningham,
Sr., Judge Presiding, held in Dallas, Dallas County, Texas.

Proceedings reported by machine shorthand.

ORIGINAL

A P P E A R A N C E S

APPEARING FOR THE STATE

Mr. Toby Shook
SBOT NO. 18293250
And
Mr. Bill Wirskye
SBOT NO. 00788696
Assistant District Attorneys
133 No. Industrial Blvd.
Dallas, Texas 75207
Phone: 214/653-3600

APPEARING FOR THE DEFENDANT

Ms. Brook Busbee
Attorney at Law
SBOT: 03488000
703 McKinney Ave. Ste. 312
Dallas, TX 75202
214/754-9090

Mr. Juan Sanchez
Attorney at Law
SBOT: 00791599
5630 Yale Blvd.
Dallas, TX 75206
214/365-0700

PROSPECTIVE JUROR INDEX

<u>PROSPECTIVE JUROR</u>	<u>CRT.</u>	<u>STATE</u>	<u>DEFENSE</u>	<u>VOL.</u>
Rebecca Garza-Salas	4	6		10
Wendee Leigh Stringer	25	28	52	10
Yvette Morton	57	59		10
Brenda Echols	73	74		10

P R O C E E D I N G S

THE COURT: Rebecca Garza-Salas.

[Prospective juror in]

THE COURT: Good morning. How are you?

PROSPECTIVE JUROR: Just fine.

THE COURT: Please have a seat.

PROSPECTIVE JUROR: Thank you.

THE COURT: Welcome to the 283rd. I have your name as Rebecca Garza-Salas?

PROSPECTIVE JUROR: That's correct, sir.

THE COURT: You go by your hyphenated name?

PROSPECTIVE JUROR: Garza.

THE COURT: Ms. Garza, it's a pleasure to have you here this morning. Have you had time to review the guide I provided for you?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: All right. I know that's a lot of law to hit someone with at 8:00 a.m. in the morning and we don't expect you to be able to give it back to us verbatim. The objective this morning is for you to have an opportunity to go over with the lawyers the law and they will give you examples and talk about it. My job is to be sure that you, at the end of the process, that you understand the law.

1 PROSPECTIVE JUROR: Okay.

2 THE COURT: That's the first objective.

3 And then the next question is can you follow the law? Many
4 times you come into this process and people think that they
5 are on trial. This is about as informal as we can get.

6 It's the only way that the lawyers can have an opportunity
7 to visit with you and get you up to speed and using as
8 little of your time as we possibly can.

9 Because you were here on time this
10 morning, you get to go first. You were second, so being on
11 time does have its advantages. Before I let the lawyers
12 begin, do you have any questions about anything that you
13 have read thus far?

14 PROSPECTIVE JUROR: No, sir.

15 THE COURT: You saw that we're going to
16 begin trial on November 10th?

17 PROSPECTIVE JUROR: Uh-huh.

18 THE COURT: Do you have any problem
19 serving this Court for those two weeks?

20 PROSPECTIVE JUROR: No, sir.

21 THE COURT: Mr. Shook will inquire for
22 the State.

23 MR. SHOOK: May it please the Court.

24 REBECCA GARZA,

25 having been duly sworn, was examined and testified as

1 follows:

2 DIRECT EXAMINATION

3 BY MR. SHOOK:

4 Q. Ms. Garza, I'm going to ask questions on
5 behalf of the State. You have been down on a jury before,
6 so you know how the process is or usually is.

7 A. Yes, sir.

8 Q. This is a little different. Because it's a
9 death penalty case, we talk to each juror individually, but
10 the same process in that we're going to ask you information
11 and ask more questions and we'll follow up on some of the
12 information you put in your questionnaire.

13 A. Okay.

14 Q. Tell us a little bit about that jury. You
15 were on a jury this last year?

16 A. That is correct.

17 Q. It was a murder case?

18 A. Yes, sir.

19 Q. What do you recall about the facts? What type
20 of murder case was it?

21 A. Um, what type murder case?

22 Q. Yeah, just generally, what do you recall about
23 the facts?

24 A. Basically, a gentleman took the life of
25 another gentleman, basically, just because -- I mean, he had

1 no reason to.

2 Q. Did they know each other?

3 A. No, not from what I understood.

4 Q. Had they gotten into an argument or --

5 A. Somewhat of an argument. The guy had been
6 drinking and, you know, they got a little rowdy and the
7 other guy was, basically, just doing his job by asking them
8 to leave the premises and --

9 Q. This happened at a club of some sort or a bar?

10 A. From what I recall, yes, sir.

11 Q. Okay. Did the defendant testify in that
12 trial?

13 A. Yes, he did.

14 Q. Okay. How did the deliberations go? Was it
15 pretty well agreed upon or were there a lot of arguments
16 back there or how was that situation?

17 A. No, not a lot of argument that I recall.

18 Q. Pretty good cut and dried case?

19 A. Pretty much.

20 Q. And the sentence was a life sentence?

21 A. That's correct.

22 Q. Anything -- was that a pretty easy decision to
23 make, also, among the jurors or was that some arguments
24 there?

25 A. From -- on my point of view from everything

1 that was presented, yes.

2 Q. Okay. Anything about that experience which
3 might affect you sitting on another jury this soon?

4 A. No, sir.

5 Q. Okay. You also had an uncle that's a Sheriff
6 of Webb County; is that correct?

7 A. That's correct, sir.

8 Q. How long has he been the Sheriff there?

9 A. Good question. I want to say he's on a second
10 term.

11 Q. Okay. Has he always been in law enforcement?

12 A. From what I recall, yes, sir.

13 Q. Are you very close to him? Do you talk about
14 his job or --

15 A. No. I mean, I was close to him when I was
16 little. I always wanted to be like him. He was a detective
17 for a long time. And we moved to Dallas. I've been in
18 Dallas for almost 20 years. And the last time I saw him was
19 at my grandma's funeral, which was in April. But I really
20 didn't talk to him that much.

21 Q. You don't think that relationship would affect
22 you in any way, then?

23 A. No, sir.

24 Q. Of course, this particular case has received
25 quite a bit of publicity when it occurred, somewhat

1 afterwards. Every juror has heard a little bit about it.
2 You said that you recall hearing it on TV when you were
3 flipping channels?

4 A. Uh-huh.

5 Q. What is it that you recall about the facts of
6 the case or what you heard on TV?

7 A. I don't really like to watch the news, to be
8 honest. It's too depressing. I don't really care to read
9 the newspaper, either. I was just flipping channels. I had
10 already heard about, you know, part of it and then when that
11 happened and I just -- it sounded too depressing being over
12 the holidays and I just --

13 Q. So you didn't --

14 A. I just really didn't pay attention, to be
15 honest with you, never followed it, never caught my
16 attention.

17 Q. Tell us -- I want to talk to you a little bit
18 about the death penalty. You believe in the death penalty
19 as a law. You put that on your questionnaire. Tell me why
20 you believe in the death penalty. What purpose do you think
21 it serves as a law?

22 A. Well, if you knowingly and intentionally cause
23 harm to someone else, I mean, that's -- for a long time I
24 didn't believe that way, but, you know, why should someone
25 continue living certain luxuries when you intentionally took

1 somebody else's life?

2 Q. What caused you to -- you said a long time you
3 didn't believe that. What caused you to change your mind?

4 A. As I grew older and, you know, you get to know
5 people and, you know, how aggressive people are and their
6 way of thinking and I just don't understand why some people
7 feel and think that way and, I mean, it's just not right.

8 Q. Okay.

9 A. It's just not right.

10 Q. How long has it been since you changed your
11 mind on the death penalty?

12 A. Um, I'd say probably after I became
13 independent, when I became independent and started living on
14 my own and fending for myself, when I was 18.

15 Q. What types of crimes do you think the death
16 penalty should be used for? What comes to mind when you
17 think of a proper death penalty case?

18 A. To start off, intentionally being you,
19 yourself, or being involved in the taking of somebody's life
20 and -- how can I say? You place yourself in certain
21 situations and you are there because you know what is
22 already in the back of your mind. You know what you are
23 capable of doing, knowing that you can control yourself and
24 you don't. And you just find it easy to just take
25 somebody's life and that's not right.

1 Q. The type of case you sat on last year, did you
2 feel that would be an appropriate death penalty case?

3 A. In my opinion, yes, it would have.

4 Q. Okay. And that's because of his intentional
5 killing?

6 A. Yes, sir.

7 Q. Did that particular defendant, did he have a
8 prior criminal record that the jury was made aware of in the
9 punishment phase or do you recall?

10 A. I believe he had been in and out of jail or --
11 jail -- jail or prison, I don't recall.

12 Q. In Texas the death penalty is reserved just
13 for certain types of murder cases. They have to be
14 intentional killings. It doesn't take long to form the
15 intent, but it has to be an intentional killing. It can't
16 be, you know, not self-defense, not legal justification, not
17 an accident. So it has to be a murder case plus something
18 else, aggravated facts such as a murder during a robbery or
19 during a rape, kidnapping, arson, murder of specific
20 individuals, such as a police officer, fireman on duty,
21 murder of more than one person, several victims, could be
22 murder of a child under the age of six, murder for hire, if
23 you do it for money or profit.

24 Those are the specific types of
25 situations that the death penalty is reserved for in Texas.

1 The way the system is set up, the trial is divided into two
2 portions. There's the guilt/innocence stage and the
3 punishment stage. If you don't find him guilty, obviously,
4 everyone goes home.

5 But if you find him guilty, you move to
6 the punishment phase where you get some questions, Special
7 Issues, which we will talk about in a moment. If those
8 Special Issues are answered yes, yes, and no, if you believe
9 the defendant is a future danger, that he did anticipate a
10 life would be taken, and there's no mitigating evidence,
11 then the defendant would be sentenced to death. If they are
12 answered any other way, it's a life sentence.

13 Are you aware of the method of execution
14 in Texas?

15 A. Um, no, not really.

16 Q. It's by lethal injection. It used to be by
17 the electric chair. The procedures are the same in each
18 case. If the defendant is sentenced to death by the Judge,
19 he would be placed on death row. He would wait. At some
20 point in time down the line the Judge would give him an
21 actual date of execution.

22 Just prior to that date he would be moved
23 to Huntsville, Texas, where the executions take place. He
24 would be put in a cell a few feet from that execution
25 chamber. He would be given an opportunity to speak with his

1 loved ones, family, friends, or a minister, if he so
2 desired. He would be given a last meal.

3 At 6:00 p.m., though, all executions take
4 place, unless there is some type of delay, legal delay. He
5 would be placed on a gurney and secured by straps. You may
6 have seen it on TV. I don't know. They show it a lot.
7 There's witnesses there for both the defendant and the
8 victim, if they desire to be there.

9 And the execution takes place by simply
10 injecting lethal poisons which stop the heart, force --
11 collapse the lungs and put him into a very deep coma. It
12 happens in about 15 seconds. They are often described in
13 great detail in the media, you know, the last words and
14 those type of things. Sometimes they ask for forgiveness,
15 sometimes they're defiant.

16 The point of it is this. You know
17 probably from growing up here in Texas that the death
18 penalty is a crime which is prosecuted and a punishment that
19 is actually dealt out, unlike some states. They have the
20 death penalty and they never use it. They put people on
21 death row, but they never use it. Texas does. Texas leads
22 the nation in executions almost every year. I'm sure they
23 lead in executions this year.

24 It is our goal in this case that the
25 defendant will be found guilty. We believe we have that

1 evidence, and, also, to convince a jury to answer those
2 questions in a way which would result in his execution. We
3 put all our cards out on the table.

4 You have told us that you are in favor of
5 the death penalty as a law. You think it should be
6 enforced. And I just want to know if you think you are the
7 type of person, who, if you were put on this type of jury,
8 now that you are down here and you have thought about it a
9 little more, could you actually make those decisions?

10 A. Yes, sir.

11 Q. And be comfortable with it?

12 A. Yes, sir.

13 Q. Okay. Now, let me go into one other area.

14 When we talk about the death penalty, we usually think of
15 examples of the actual triggerman. If I go in a 7-Eleven
16 and shoot down the clerk, obviously, I could be prosecuted
17 for the death penalty.

18 Some crimes, though, are carried out by
19 groups of individuals. We call these parties or
20 accomplices. The law says that you can be held responsible
21 even in a capital murder case if you are not the triggerman,
22 if you are actively involved in the crime. You can even get
23 the death penalty, if you are actively involved in the
24 crime, just depending on the specific facts.

25 Some jurors tell us, though, they have --

1 they would disagree with that aspect, that they have no
2 problem with the death penalty for the triggerman, the
3 person that takes the life. Their problem comes with an
4 accomplice who didn't actually take the life, but maybe
5 assisted in the crime in some way. They may give a life
6 sentence, would only prosecute him for a long prison term,
7 but not the death penalty. They draw a line there. Other
8 jurors say, no, they are fine with the law on accomplices
9 getting the death penalty.

10 How do you feel about a nontriggerman
11 getting the death penalty?

12 A. Well, if you are old enough to make your own
13 decisions, you know, you're there because you want to be
14 there and you are part of it, knowing the consequences and
15 what may happen and what you are willing to do.

16 Q. Okay. So you don't have a problem with that?

17 A. No. You are just as guilty as the triggerman.

18 Q. Now, I want to talk to you about these Special
19 Issues which are up here. You probably read over them and
20 just to kind of review, read Special Issue No. 1 to
21 yourself.

22 A. Okay. Out loud or just to myself?

23 Q. Just yourself. Let me know when you are done.

24 A. (Prospective juror complies.) Okay.

25 Q. Now, you see that question is asking you to

1 make a prediction how someone would behave in the future.

2 First of all, let me ask you, do you feel comfortable making
3 that type of prediction?

4 A. Yes.

5 Q. What type of evidence would you want to know
6 before you answered that question?

7 A. You mean whether or not they would continue?

8 Q. Yes. If you were going to answer yes to that,
9 what do you think you would need? What type of evidence
10 would you want to hear and know which would be important to
11 you in making that type of decision?

12 A. Well, I'd like to know a little more on the
13 background as far as, you know, his history, if -- you know,
14 you can make a mistake once, maybe twice, but we all have
15 enough time in life to change our ways, you know, make
16 certain decisions, just change our way of thinking. And if
17 people have had opportunities to do that and they like to
18 continue down the bad path, well, you know, you made a bad
19 decision more than once and you have had time to, you know,
20 change your way of living and way of thinking and you don't,
21 then --

22 Q. Okay. Now, question No. 1, one piece of
23 evidence you will get to consider is the crime itself. You
24 don't get to this question until you have found the
25 defendant guilty of capital murder.

1 A. Okay.

2 Q. After that, this is a question you receive.

3 Now you can hear additional evidence about the defendant's
4 background. If they do have a previous criminal record, you
5 get to hear that. If they don't, you get to hear that, the
6 good and the bad. And that all goes into this question.

7 The question starts off with a no answer
8 and we have the burden of proof that it should be answered
9 yes. Under the law the jurors have to look at that
10 evidence, review it again, and then decide if the State has
11 proven it beyond a reasonable doubt. But you don't get to
12 it unless you have found the defendant guilty of an
13 intentional killing --

14 A. Okay.

15 Q. -- during the course of a felony or police
16 officer, whatever the particular indictment might be.

17 A. Uh-huh.

18 Q. I just want to make sure because you were,
19 like a lot of jurors, pretty -- what was key to you about a
20 death penalty case was the intentional killing.

21 A. Uh-huh.

22 Q. For instance, the murder case you sat on. And
23 sometimes people have a problem with that area of the law
24 and I just want to cover that with you. This question is
25 not designed to be an automatic yes. The Judge would

1 instruct you that the law contemplates that you would review
2 the evidence and then decide.

3 A. Right.

4 Q. Some jurors, however, tell us, if I have made
5 the decision beyond a reasonable doubt he was guilty of
6 capital murder, that tells me all I need to know that he is
7 dangerous and it would be an automatic yes.

8 A. Right.

9 Q. Other jurors say, no, I can follow the law in
10 that regard, he necessarily may not be dangerous. And I
11 just want you to be as honest with us as possible. Would
12 you -- how would that affect you? Would you be able to wait
13 and listen to the evidence on question No. 1 after finding
14 him guilty?

15 A. I mean, after listening to all the evidence
16 provided, if it's proof enough of his acts, you know, that
17 he was guilty just as much as the other ones, then, yeah, he
18 would be a threat to society, period.

19 Q. Okay. But the law says that even if you found
20 him guilty, you can't automatically answer it yes.

21 A. Right.

22 Q. Would you be able to do that or would the
23 guilty finding be all you needed at that point in time? See
24 where I'm going with that? Some jurors tell us -- and I
25 just want to see if you can follow the law on this

1 particular aspect and just because you found him guilty,
2 doesn't automatically mean question No. 1 is yes.

3 A. Right.

4 Q. Would you be able to follow that law?

5 A. Yes.

6 Q. Let's talk about Special Issue No. 3. That's
7 the last one and it's the longer question. If you would
8 just take a moment to read that.

9 A. [Prospective juror complies.] Okay.

10 MR. WIRSKYE: May we approach, Judge?

11 THE COURT: You may.

12 (Bench conference)

13 Q. (By Mr. Shook) That question is a longer one.
14 It's the last question you get to. The question No. 2 has
15 to do with that parties deal, if a person is not actually
16 the triggerman, but you believe that they anticipated that a
17 human life would be taken, then you would answer that one
18 yes.

19 Then the last one is the mitigation
20 question. You have already found he's guilty. You have
21 already found he's a continuing danger to society. You
22 already found that he either intended someone to die or he
23 anticipated they would die.

24 As you sit there today, can you think of
25 any type of evidence that you would deem to be mitigating?

1 A. I don't understand.

2 Q. Mitigating is anything you might -- I can't
3 tell you what it is. It's going to be up to you. Anything
4 you might feel would make the defendant deserving of a life
5 sentence, rather than a death sentence. It could be
6 anything in his background, anything like that.

7 A. I don't know. I would have to -- I can't make
8 that decision right now -- I mean, I would have to hear
9 everything out to make that type of decision.

10 Q. Okay. The law says you don't have to tell us
11 what mitigating is, mitigating evidence. It could be
12 something in his background that weighs in his favor. But
13 what you have to be able to do is keep your mind open to it.

14 But, again, I want to make sure you can
15 follow the law on this particular point. You don't get to
16 that question unless you have already found him guilty.

17 A. Uh-huh.

18 Q. And you already feel that the State has proven
19 to you beyond a reasonable doubt that he's a continuing
20 danger to society and that he anticipated that a life would
21 be taken. Some jurors can follow that and say, well, I
22 could still give him a life sentence under those
23 circumstances --

24 A. Uh-huh.

25 Q. -- if there were sufficient mitigating

1 factors. And other jurors tell us, well, once I have gone
2 that far down the road where I believe he's guilty and he's
3 a continuing danger and anticipated a life, no. I mean,
4 that question is closed off to me and I would never consider
5 any mitigating evidence because he's, obviously, a very
6 dangerous human being.

7 A. Right.

8 Q. How do you feel about that law, that area of
9 the law?

10 A. Well, after listening to everything and if I
11 feel he's guilty and everything is proven that he is guilty,
12 then he deserves the death sentence.

13 Q. Okay. Would the mitigating issue be closed
14 off to you, then, at that point in time?

15 A. Probably.

16 Q. Because of the guilt finding and the
17 continuing danger finding you have already made?

18 A. Uh-huh.

19 Q. Let me go over a couple of other areas. You
20 said the defendant did testify in your previous trial?

21 A. That is correct.

22 Q. Okay. If he did not testify, if the defendant
23 chooses not to testify in a criminal trial, the jury can't
24 hold that against him.

25 A. Uh-huh.

1 Q. Because it could be several reasons why
2 somebody may not choose to testify. Would you be able to
3 follow the rule of law of not holding it against a defendant
4 if he chooses not to testify?

5 A. Yes, sir.

6 Q. Okay. There was -- you have got a copy of the
7 questionnaire up there, do you?

8 THE COURT: No.

9 Q. (By Mr. Shook) I want to ask you a couple of
10 questions. I know you don't remember your answers, but I'm
11 going to go over a couple of areas here before I go on. One
12 area we talked about, we give a statement where you can
13 agree or disagree with it or be uncertain about it and I
14 would like to follow up on a couple of those.

15 A. Okay.

16 Q. One was, my city's police officers are
17 enforcing the laws in a professional and fair way and you
18 put uncertain about that. What were you thinking when you
19 saw that statement and you put uncertain?

20 A. Well, I guess -- well, I was uncertain in the
21 aspect that I don't want to judge all of them by certain
22 behavior of some, because not everybody is the same and I've
23 just been -- not necessarily in situations, but some of them
24 take advantage of, you know, their badge, should I say.

25 Q. What type of situations? You said -- anything

1 you were personally involved in or just heard about or know
2 about?

3 A. Situations where they seem to at times
4 discriminate people. They take that authority to try to
5 intimidate. And, you know, it's just -- it's not right
6 because we're supposed to feel that they are there to
7 protect and serve us.

8 Q. Do you know anyone personally that it has
9 happened to in the criminal justice system? Know anyone
10 that has ever been through it? I know you have the uncle
11 that's a sheriff. Do you know anyone who has ever been on
12 the other side? Prosecuted?

13 A. I don't understand what you mean.

14 Q. You said that sometimes police officers take
15 advantage of their badge or discriminate. Do you know
16 anyone personally that that's happened to?

17 A. No. I didn't know the people personally, no.

18 Q. But you have heard about it?

19 A. Heard about it or have seen it or just seen
20 the way they act towards other people.

21 Q. Personal observations?

22 A. Passing by, but, personally, no, sir.

23 Q. And have you ever known anybody that's ever
24 been arrested or been through the criminal justice system?
25 Been close to anybody?

1 A. Yeah, I've known some, but, no, not close to
2 them.

3 Q. Anything like that happen in their particular
4 case?

5 A. Not that I'm aware of.

6 Q. Were they just friends or related to you?

7 A. Relatives, but in Laredo, not here in Dallas.
8 I mean, I've lived here almost 20 years and kind of moved
9 away from that side of the family.

10 Q. Okay.

11 MR. SHOOK: Can I have just one moment,
12 Judge?

13 THE COURT: Yes.

14 MR. SHOOK: I don't have any other
15 questions at this time, Judge. Approach, Your Honor?

16 THE COURT: You may.

17 (Bench conference)

18 THE COURT: Ms. Garza, we want to thank
19 you for your participation this morning. The attorneys have
20 agreed to excuse you from this jury service.

21 PROSPECTIVE JUROR: Okay.

22 THE COURT: Please leave with the thanks
23 of the Court for your participation. And you learned a lot,
24 probably a lot more about the Texas law than you anticipated
25 you would. You just tell your uncle you just didn't make

1 the cut. Try again next time. Thank you.

2 PROSPECTIVE JUROR: Very good, thank you.

3 [Prospective juror out]

4 THE COURT: Ms. Stringer.

5 [Prospective juror in]

6 THE COURT: Good morning, Ms. Stringer.

7 How are you?

8 PROSPECTIVE JUROR: Good.

9 THE COURT: Wendee Leigh, is that how you
10 pronounce your name?

11 PROSPECTIVE JUROR: That's correct.

12 THE COURT: We appreciate you being here
13 this morning. And have you had time to go over the guide
14 that I provided for you?

15 PROSPECTIVE JUROR: I have.

16 THE COURT: I know that's a lot of law to
17 give you first thing in the morning and we don't expect you
18 to be able to give it back to us verbatim. But the
19 objective here this morning is for you to have an
20 opportunity to visit with the lawyers and they are going to
21 try to educate you a little bit further on how the law
22 interrelates.

23 My job is to, number one, that you
24 understand the law. So if you don't understand the question
25 or understand the concept, we'll explain it a different way

1 until you do. The first step is do you understand the law?
2 The second issue is after you understand the law, can you
3 follow the law?

4 PROSPECTIVE JUROR: Okay.

5 THE COURT: So that's what this process
6 will involve this morning. Only question that I have for
7 you, as stated, the trial shall begin on November 10th. Can
8 you give the Court two weeks of your time?

9 PROSPECTIVE JUROR: It will probably be a
10 little bit difficult. I'm a commissioned salesperson, but I
11 don't know if that's a reasonable excuse not to be here.

12 THE COURT: Yes, ma'am. I understand you
13 deliver pharmaceuticals?

14 PROSPECTIVE JUROR: Medical equipment to
15 the elderly.

16 THE COURT: Excuse me. I've read a lot
17 of these questionnaires. I do pretty good. I understand
18 that it would be a financial hardship and any jury service
19 is going to be a financial hardship on everybody, so we
20 understand.

21 The first thing I tell people is that I
22 will use your time very wisely.

23 PROSPECTIVE JUROR: Okay.

24 THE COURT: Now, I think that you saw how
25 we do things, very organized. Get the letters out, be here,

1 we'll get you in, and get you out. We're not going to waste
2 your time. And I also read in your questionnaire that you
3 could arrange your schedule ahead of time?

4 PROSPECTIVE JUROR: Uh-huh.

5 THE COURT: That's why we're doing this
6 to give you that much time in advance so you can arrange
7 your schedule. We do work business hours and we anticipate
8 that you would be able to use a phone during the day and not
9 be sequestered at night. So you could have some sort of --
10 you can make one or two runs in the evening, if you had to.

11 PROSPECTIVE JUROR: Yes, I could. And in
12 the morning.

13 THE COURT: So we will do the best we can
14 to use your time and get you out of here. Fair enough?

15 PROSPECTIVE JUROR: Fair enough.

16 THE COURT: Mr. Wirskye, would you like
17 to inquire?

18 MR. WIRSKYE: May it please the Court.

19 WENDEE STRINGER,
20 having been duly sworn, was examined and testified as
21 follows:

22 DIRECT EXAMINATION

23 BY MR. WIRSKYE:

24 Q. Ms. Stringer, how are you this morning?

25 A. Good, thank you.

1 Q. I'm Bill Wirsky and I'm the assistant DA that
2 will be visiting with you in the next few minutes. What I
3 want to do is talk to you about some of the information on
4 your questionnaire that you were kind enough to give us, I
5 think you have a copy in front.

6 A. Uh-huh.

7 Q. Maybe talk a little bit about your thoughts,
8 feelings, and opinions on the death penalty, capital
9 punishment, and then maybe finish up talking a little bit
10 about the law and some of the rules that apply in a death
11 penalty case.

12 What type of work do you do exactly? I
13 know you are self-employed?

14 A. I deliver medical supplies. I market home
15 health agencies. And when they need equipment for the
16 elderly, I deliver it. They call me for it.

17 Q. How long have you been doing that?

18 A. About one and a half, two years. I kind of
19 did it part time and then went full time.

20 Q. At some point in the past you applied to be a
21 police officer; is that right?

22 A. I did.

23 Q. Tell us about that.

24 A. I applied in California -- I apologize, my
25 cell phone. I didn't turn it off. I did apply to be a

1 police officer, but it got to the point where we went into
2 an orientation and I really realized that five foot one and
3 115, I wasn't going to stop a whole lot of people, so I
4 realized there was a problem with that.

5 Q. Sure. Was it something you were interested
6 in, though, law enforcement?

7 A. Yes.

8 Q. Something you are still interested in?

9 A. Interested from a lawyer standpoint.

10 Q. You keep track of the big cases?

11 A. Not locally. I just like to watch the cops
12 and court, you know, on TV.

13 Q. You also told us, I guess, your husband had
14 been robbed twice?

15 A. Way back before I knew him, uh-huh.

16 Q. Do you know any details of that?

17 A. Only that he became friends with a gentleman
18 and he told him he was leaving town and while he was out of
19 town, he was robbed. And the guy came back the second time
20 and robbed him again.

21 Q. Do you know whether the police were involved
22 or did it get down to the courthouse or anything like that?

23 A. The police were involved because he thought he
24 knew who it was. And I believe within a year he saw his car
25 at another location and he called the police again and said,

1 here's his car. I don't know where he's at, but I don't
2 know if he was ever arrested. I don't know the conclusion
3 of that at all.

4 THE COURT: We use a definition very
5 carefully here. "Robbed" means it was a face-to-face
6 confrontation and took something from him. "Burglary" is
7 when he broke into the house or car.

8 PROSPECTIVE JUROR: It was burglary.

9 Q. (By Mr. Wirskye) I thought that was what you
10 were talking about.

11 A. Uh-huh.

12 Q. Let's see. And you have never been a juror
13 either in a civil case or criminal case; is that right?

14 A. No, sir.

15 Q. It looks like you were involved in some type
16 of civil litigation?

17 A. Yes, I was.

18 Q. How long ago was that?

19 A. Five years ago. Actually, it just went to
20 arbitration. It wasn't any type of court case or anything.

21 Q. You weren't in front of a judge or have a
22 trial or anything?

23 A. No.

24 Q. Any lingering impressions about that process
25 on the civil side and arbitration?

1 A. No, no, I thought it went smoothly.

2 Q. Looks like you, also, had your sister in
3 Kentucky --

4 A. Uh-huh.

5 Q. -- that, I guess, in the mid '90's had a drug
6 case?

7 A. Yes.

8 Q. What do you know about that?

9 A. We weren't really all that close at the time.
10 All I know is that she was with a gentleman who apparently
11 was manufacturing some type of drug in a warehouse. She
12 happened to be there when everything, I guess, happened and
13 so she got arrested as well. The only thing I know is she
14 was looking at a lengthy time in jail, but she turned, I
15 guess, evidence and they shortened her stay to 18 months.
16 And she didn't actually go to a facility that was real
17 locked down. It was mainly rehab-type of jail time. So
18 that's about all I know.

19 Q. Did that rehabilitation-type thing work out
20 for her?

21 A. Yes, very much so.

22 Q. Kind of turned her life around?

23 A. Yes.

24 Q. Do you think she was treated fairly based on
25 what you knew about the process?

1 A. You know, I really didn't -- I wasn't really
2 close to her at the time. I was hoping for a lighter
3 sentence, of course, so I guess so. I didn't really know
4 whether she was involved or not.

5 Q. Okay. You have also told us, I guess, that
6 generally you are in favor of the death penalty; is that
7 right?

8 A. Yes.

9 Q. Okay. Could you tell us why, I guess, just in
10 your own words that you feel that we should have the death
11 penalty or what purpose you think it serves in having one?

12 A. I just -- personally, I think that if a person
13 is going to go out and harm another person intentionally and
14 be very brutal about it, that they ought to pay the
15 consequences for that.

16 Q. Okay. Is there any particular type of case
17 that comes to mind when you think about an appropriate type
18 case for the death penalty? Particular facts or something
19 that might be important to you?

20 A. I think if I know the facts well enough, I can
21 -- I can make a decision for a death penalty. If I can see
22 a direct cruelty, that would say I would probably make my
23 mind up quicker. I think cruelty is the one that mainly
24 sticks out in my mind, like an execution or being kidnapped.
25 But I think other times you would have to really -- I would

1 have to be convinced quite clearly whether a person was
2 definitely in the wrong.

3 Q. We've talked about, I guess, like some people
4 don't stay up on the local cases, but is there some famous
5 national case or something that you think of that you think
6 of cruelty or appropriate case for the death penalty?

7 Something you have seen on TV or heard about?

8 A. I think that the one that just pops in my mind
9 is the one where the lady killed her five children, that
10 one.

11 Q. The one down in East Texas?

12 A. Yes. That one to me, I just have no question
13 about that.

14 Q. Fair enough. Let me -- you know, you may not
15 know this or you may. Most people don't. Hopefully, you
16 don't sit around thinking about this. But murder is the
17 only crime in Texas the death penalty is available for, and
18 then only a certain subset of particular type of murders,
19 what we call capital murders, are the only type of murders
20 that the death penalty is available for.

21 If you kill a police officer on duty,
22 fireman, prison guard, child under six, mass murder, serial
23 murder, or you commit a murder, intentional murder, in the
24 course of a robbery, burglary, or that type of thing, those
25 are the only type crimes that it's available for. So it's

1 kind of a very narrow subset of murder.

2 If you were Governor for a day, just off
3 the top of your head, do you think that you would broaden
4 that group or do you think you would shrink it? I think
5 what I'm driving at --

6 A. No, I don't think that I would broaden it. I
7 think it has to remain pretty tight.

8 Q. I guess a lot of times when we think of
9 capital murder, especially like murder in the course of a
10 robbery, you think of one person going in, I guess, a
11 7-Eleven, holding up the clerk and shooting and killing the
12 clerk and making off with the money, that type thing.

13 Oftentimes crimes are committed, though,
14 by more than one person, a group or gang of people.
15 Depending on the facts and circumstances of some of those
16 cases, the law in Texas allows for not only the triggerman,
17 the person that actually, I guess, intended or actually
18 caused the death, to face the death penalty, but also these
19 accomplices, the nontriggermen.

20 And we talk to a lot of people who are
21 otherwise in favor of the death penalty, but they think the
22 death penalty should just be limited to the person that
23 actually pulled the trigger or caused the death. Only if
24 you take a life, will your life be taken. And some people
25 feel the opposite. They think that maybe it should at least

1 be considered for the accomplices or the nontriggerman.

2 Where do you kind of come down on that?
3 I know it's not something that you would have ever thought
4 about.

5 A. Right. Um, for me I think I would have to
6 look at the whole picture. Um, I'm not sure if I would
7 definitely put that on someone, if I didn't know their
8 intent, but I think that during the course of a robbery, I
9 think I would have to take in the circumstances of really
10 what went down whether or not I would include the whole
11 bunch. I think I would have to really know that the
12 incident -- I would really want to know what their intention
13 was going in there to do some -- to harm and that they
14 stayed around long enough to do harm.

15 Q. Looks like from your questionnaire, intent is
16 very important to you --

17 A. Yes.

18 Q. -- when you talk about who is deserving of the
19 death penalty?

20 A. Yes.

21 Q. And I want to be clear that our law allows
22 some accomplices or nontriggermen to actually face the death
23 penalty in a situation where they had no intent that someone
24 get harmed.

25 A. I think if I had a law that showed me that,

1 which I'm not clear on at this point, then if the law states
2 that, then I'm willing to do that. But I would have to have
3 a law to wrap that around it.

4 Q. Let me do this. Let me give you an example
5 and kind of bounce this off you. Say Mr. Shook and I get
6 together with another friend of ours and we all decide we're
7 going to go rob a bank. We only have one gun.

8 The plan is Mr. Shook is going to take
9 the gun in and kind of hold everybody at bay. I'm going to
10 go in kind of as the bagman and collect the cash and our
11 friend is going to be the getaway car driver out front, keep
12 a lookout, and if the police come, he's going to honk or
13 something like that.

14 And we drive up. Mr. Shook and I are the
15 only two that go in and he's holding everybody up. And I'm
16 gathering the cash. At some point for some reason, maybe
17 just because he's mean or he thinks somebody is about to hit
18 a silent alarm, for whatever reason, he shoots and kills the
19 teller. We get away and are caught and brought to trial.

20 Obviously, I think you know he can be
21 prosecuted for capital murder. He committed the intentional
22 murder during the course of a robbery. He could face the
23 death penalty. What do you think about somebody in my
24 shoes? I never intended anybody to get hurt. I signed up
25 for a bank robbery and all of a sudden a capital murder

1 breaks out.

2 A. I believe because you were in the vicinity or
3 the area and you didn't stop it and I think that, yeah, I
4 feel like you were right there with him, kind of going in
5 there together and kind of that whole thing would consider
6 the two of you in one crime because you didn't stop it.

7 Q. Okay. How about the person, the getaway car
8 driver outside? What do you think about him? He could
9 still face the death penalty, too.

10 A. I'm not quite sure. I would have to have a
11 law on that whether or not that person had to be in the
12 vicinity of that crime, could they have stopped that crime?
13 I don't know the law well enough to say.

14 Q. Basically, there's two ways to find people
15 like me or the getaway car driver guilty. If you think I
16 aided or encouraged Mr. Shook, for instance, to actually
17 commit that murder. Maybe if I said, go ahead and shoot
18 her, that type thing, I could be guilty as an accomplice.

19 The second way, kind of what we've been
20 talking about, is the law of conspiracy.

21 A. Uh-huh.

22 Q. The three of us agreed, conspired, to commit
23 that aggravated robbery. And in furtherance of that crime,
24 during that crime, Mr. Shook commits a murder. If myself
25 and the getaway car driver should have anticipated that a

1 life could be taken, then we're on the hook for that capital
2 murder, as well.

3 A. Uh-huh.

4 Q. So at least when you are talking about finding
5 somebody guilty, an accomplice guilty of capital murder, you
6 look at whether I should have anticipated that a life could
7 be taken or whether that getaway car driver should have
8 anticipated that a life would be taken.

9 A. I guess I would take that into consideration
10 because a weapon was used during that crime in a close
11 proximity of that, I guess. So if you are going in with a
12 weapon, with the weapon, when you started the crime, you had
13 the weapon with you and you went to do it, I suppose that
14 the anticipation that a life could have been taken, then the
15 three of you would be kind of classified in that crime as
16 far as how --

17 Q. From the fact that me and the getaway car
18 driver knew that he had a gun?

19 A. That you all went in with a gun, that there
20 was a gun when the whole crime started, uh-huh.

21 Q. That would kind of answer that question for
22 you whether we should have anticipated that a life would be
23 taken?

24 A. Yes, uh-huh.

25 Q. That's what it would be to find somebody

1 guilty of capital murder. In the second phase of the trial,
2 the punishment phase, we'll talk about it more in a little
3 bit, you would have to find that the people actually
4 anticipated, not should they have anticipated, but did they
5 anticipate that a life would be taken?

6 A. Uh-huh.

7 Q. So it's kind of a higher burden you get.

8 A. Uh-huh.

9 Q. But, you know, I guess -- and I'll be up front
10 with you. We're prosecuting this case, prosecuting Mr.
11 Murphy as an accomplice, okay, a nonshooter, a
12 nontriggerman, and that's why we're spending so much time on
13 this.

14 And we talk to a lot of people and some
15 people just tell us, you know, I know what the law is, I can
16 see the logic of the law, but when it comes to taking
17 someone who didn't actually take a life, when it comes to
18 taking their life by the death penalty, I just couldn't do
19 it.

20 And we want to make sure that we don't
21 put anybody in that hard spot by putting them on the jury
22 and kind of give them a crisis of conscience, I guess --

23 A. Uh-huh.

24 Q. -- whether to follow the law versus what they
25 really feel inside. How do you come down on that?

1 A. I'm pretty much a law person. I mean, you
2 know, everybody has the same law in their lap. So whether
3 you follow it or not is your own decision. If you break it,
4 you break it. But I'm a real consequence kind of person
5 that you have to -- you know, everybody has got the same
6 amount of stuff on the table. And you don't go with it, you
7 don't get the goods. So --

8 Q. So you wouldn't necessarily or automatically
9 take the death penalty off the table for a nonshooter or
10 just an accomplice, that type of thing?

11 A. No.

12 Q. You could keep an open mind, look at the facts
13 and circumstances?

14 A. Right.

15 Q. And that's basically what the law envisions.
16 I think you told us, like just about everyone we talked to,
17 that you have heard a little bit about this case?

18 A. A little bit, uh-huh.

19 Q. You know what case you are down here on. And
20 everybody we talked to, basically, has heard something about
21 this case.

22 A. Right.

23 Q. What have you heard specific about this
24 particular case?

25 A. Well, that they broke out. That, I believe,

1 they tied up some people to get out. I believe someone gave
2 them a truck or something or car to get away with it. I
3 know that they went to the Oshman's, that a police officer
4 was killed during it. I don't know where -- I don't know
5 the complete details of it. I don't really know who has
6 been tried and who hasn't been tried on the case so far. I
7 know some have and --

8 Q. You haven't kept up with the results of --

9 A. No.

10 Q. -- of the previous trials?

11 A. No, huh-huh. And, basically, they were
12 caught, I believe, in Colorado in a trailer park, just those
13 kind of highlights. I really didn't get involved deeply.

14 Q. With the details?

15 A. No, huh-huh.

16 Q. How do you think -- knowing that, this is a
17 high profile case. You have at least heard something about
18 it from the media, I guess, or maybe talked about it with
19 other people, but how do you think that might affect you, if
20 you are selected to be a juror on this case?

21 A. Um, I'm not real affected by those kind of,
22 you know, by those discussions. I mean, of course, I
23 discussed them with my husband. But we've been known to
24 have pretty good debates about stuff. I'm really -- I like
25 to see the whole thing. I don't really know enough to make

1 any kind of informed decision right now.

2 Q. You don't think any pretrial publicity that
3 you may have heard would affect you in any way in this case?

4 A. Well, I know a lot of people are like, oh,
5 that's so terrible about what happened. And I know terrible
6 things happen, but I have to see -- I don't know the details
7 of it or where this person was, what's going on at the time.
8 I really do not know all that stuff.

9 Q. And all the law basically requires is that
10 people such as yourself just be able to base their verdict
11 on what they hear in the courtroom.

12 A. Right. I mean, we all have our preconceived
13 ideas, but I have not made any kind of decision for death or
14 not death or anything like that. I know the person has a
15 criminal history, and so I'm sure he's going to be paying
16 for that. But whether or not we go any further, I don't
17 know enough about it, you know, enough to say anything.

18 Q. But, I guess, you would assume that he would
19 have at least some criminal history based on the facts?

20 A. He broke out of prison, so I'm assuming he has
21 got a criminal history.

22 Q. Okay. Fair enough.

23 A. I don't know what for, though. I know that I
24 have seen the pictures in the paper and their crimes were
25 underneath, but I don't know what was which at all and I

1 haven't looked on the Internet so --

2 Q. Let me ask you this. Are you familiar with
3 our method of execution in Texas, how we carry out, actually
4 carry out, the death penalty?

5 A. I know it takes a long time to get there. And
6 then, I guess, lethal injection.

7 Q. That's right, lethal injection. As you
8 probably know -- how long have you lived in Texas now?

9 A. Um, four and a half years, five years now.

10 Q. You know the death penalty is a reality in our
11 state?

12 A. Uh-huh.

13 Q. Some states don't have it and some states give
14 the death penalty and it's never carried out. In our state
15 it's given fairly often and carried out, I guess, more than
16 any other state in the country.

17 A. Uh-huh.

18 Q. So it's kind of a reality. Just to be up
19 front with you, I told you we're prosecuting him as an
20 accomplice. We feel we have the nature, type, and quality
21 of evidence that is going to cause a jury to find him guilty
22 of capital murder and answer these three questions in such a
23 way that he will be sentenced to death and one day executed.
24 And I know it's one thing to kind of fill out a
25 questionnaire or come down and talk about it philosophically

1 or in the abstract and kind of when you get down to this
2 point, it becomes very real.

3 You know, oftentimes when we have
4 executions, the press, you know, reports a lot of the
5 details. If those -- if he's found guilty of capital
6 murder, those questions are answered yes, yes, and no, the
7 Judge has no discretion. He will be sentenced to death. He
8 will be taken down to death row where he will wait until the
9 date of execution that the Judge will give.

10 On that date he will be taken to downtown
11 Huntsville to a small holding cell. During that last day
12 get a chance to meet with family, spiritual advisors.

13 But at 6:00 or right before 6:00, which
14 is the time for all executions in Texas, he'll be taken from
15 that small room forcibly, if he didn't want to go, be taken
16 into the death chamber. You may have seen a picture of it.
17 It has got the gurney.

18 A. Uh-huh.

19 Q. He will be strapped down with leather straps,
20 again against his will, if he does not want to go. An IV
21 will be started. There will be witnesses, his friends,
22 family members, spiritual advisors. Victims of the crime
23 will also be there. He will get a chance to make a last
24 statement, if he chooses. He could apologize, ask for
25 forgiveness, or, I mean, he could proclaim his innocence up

1 to the very end.

2 At some point after he's made that
3 statement, the poisons would be started. They go into his
4 system, into his arms. His lungs would shut down, his
5 heart. Eventually he would lose consciousness and he would
6 fall into a deep coma and eventually die.

7 I don't want to be too morbid about that,
8 but those are the type details that the press reports. And,
9 again, I just want to make sure that you feel that you are
10 the type of person that could actually participate in the
11 process which could end up, one day, ending up with the
12 things I just described to you, that you feel like you are
13 the type person that could take pen in hand and answer those
14 questions, knowing that some day that may lead to Mr. Murphy
15 lying dead on a gurney one day in Huntsville. What do you
16 think about that?

17 A. I can do that.

18 Q. Okay. Fair enough. When we talk about, I
19 guess, any criminal trial, capital murder, basically breaks
20 down into two parts. The first part is what we call the
21 guilt/innocence and that's basically where the jury is
22 concerned with did he commit the crime he is charged with,
23 basically hear the facts of the crime. It would be up to
24 the jury to decide whether the State has proven beyond a
25 reasonable doubt that he's guilty of capital murder.

1 If it is a guilty of capital murder, then
2 we move into the second phase of the trial and that's where
3 the jury is asked to answer these Special Issues. The jury
4 doesn't vote life or death. We let the answers to these
5 issues or questions decide what the appropriate sentence is.

6 If you would take just a second and kind
7 of look over all three. I know you had a chance to look at
8 them in the book, but I think they are phrased just a little
9 bit differently here.

10 A. Okay.

11 Q. Basically, these are the three questions. The
12 first one kind of asks the juror, basically, to make a
13 prediction about the future. Do you think he's a future
14 danger to society? That question starts out with a no.
15 It's our burden as the State to prove to you, the jury, that
16 it should be answered yes and we have got to prove it to you
17 beyond a reasonable doubt, just like the guilt phase.

18 The second Special Issue, we kind of
19 already talked about that. That comes into play when you
20 have got somebody where you don't know they are the
21 triggerman or they are not actually the triggerman. So the
22 jury would have to find that either he actually caused the
23 death, he intended to cause the death, like a murder for
24 hire-type deal, or what we've actually talked about, that he
25 anticipated a human life would be taken. That starts out as

1 a no. Again, it's up to us to prove to the jury that the
2 answer should be yes beyond a reasonable doubt.

3 And then finally Special Issue No. 3.
4 We'll talk about this in just a second. But that's kind of
5 what we call the mitigation question or it's kind of the
6 last stop in the process to determine the appropriate
7 sentence.

8 Directing your attention back to No. 1,
9 you can see how this kind of asks the jury to make a
10 prediction. We talked to a lot of people and a lot of
11 people tell us, you know, gee, if I found somebody guilty of
12 capital murder, this question is pretty much already
13 answered for me, you know. If I found out they were a
14 capital murderer, I'm always going to think there's a
15 probability they are a future danger to society. And some
16 people don't feel that way.

17 A. Uh-huh.

18 Q. Very frankly, the law requires that at this
19 point you kind of have no preconceived notions for starting
20 that second phase. But a lot of people just tell us as a
21 matter of common sense, if I find him guilty of capital
22 murder, I'm always going to think they are a future danger.
23 And in a certain sense -- where do you kind of come down on
24 that issue?

25 A. Just like anyone else, I think that I would

1 automatically say probably. You would have to do some
2 pretty good convincing, otherwise, I think.

3 Q. Okay. So you think that, you know, the fact
4 that you found him guilty of capital murder may answer that
5 first Special Issue for you?

6 A. Uh-huh, yes.

7 Q. We talk to a lot of people that feel kind of
8 like you do. The law would require that jurors at this
9 point kind of -- that they don't answer it automatically.
10 But, very frankly, a lot of people tell us they just can't
11 do that. That's one aspect of the law they can't follow.
12 We talk to a lot of people that -- who can't follow the law,
13 very frankly, and that kind of sounds like what you are
14 telling me at that point, that's just too much nonsense or
15 not common sense to follow that law?

16 A. Yes.

17 Q. Okay. But, again, I want to make clear that
18 on these first two questions the burden is on us. You've
19 kind of said that, you know, it would take some real
20 convincing by somebody to prove that that was a no. I want
21 to make sure you are clear the answer starts off a no. The
22 burden is on us. These folks don't have to do anything to
23 prove that. That's kind of the default setting. If we
24 don't meet our burden, that answer stays no.

25 Moving down to -- we've talked about No.

1 2. Same type deal. We have got to prove it to you. Moving
2 down to No. 3, this is kind of the last stop in the process,
3 the mitigation question. It basically asks the juror to
4 look back at the facts of the offense, look at what you know
5 about him, his background, his character, and what personal
6 moral blame he bears, I guess, culpability for the crime,
7 and asks the jury is there anything that is mitigating,
8 anything that lessens his blame? And if there is, is it
9 sufficient that his life ought to be spared?

10 Again, I'll be frank with you. It's kind
11 of like Special Issue No. 1. We talk to a lot of people and
12 they say this. They say, by the time I found him guilty of
13 capital murder and by the time I found they are a future
14 danger and by the time I found they anticipated a human life
15 would be taken, there's really nothing at that point that I
16 will find mitigating. You know, I've made too many
17 decisions already. There's nothing that would cause me to
18 spare his life.

19 I'm just curious kind of where you come
20 down on that or can you think of anything that may strike
21 you as mitigating?

22 A. When you say mitigating, like some --

23 Q. It's not defined in law like what particular
24 things you have to consider mitigating. It's just anything
25 that would strike you as an individual juror that is

1 something that lessens his moral accountability.

2 A. So what you are asking me, then, is, is there
3 anything that I can think of that would spare this person's
4 life?

5 Q. Some people tell us maybe age. If he was 18,
6 19, 20, that may be a factor. I might think that's
7 mitigating. A lot of people tell us, hey, if you are old
8 enough, 18, 19, 20, to know right from wrong. And, very
9 frankly --

10 A. I think it would have to be placed out there.
11 If someone was trying to use a situation, it would have to
12 be just placed out there. I can't really think -- I think
13 if I had to say anything, like you are saying, age, if a
14 person were very, very, very young, that would do it for me.

15 Or if you are talking about a person's
16 background, like how they were brought up as a child and so
17 forth, no.

18 Q. When you talk about age, how young are you
19 talking about? What age do you have in mind?

20 A. We're talking probably 12 and under.

21 Q. Okay.

22 A. Possibly 13, 14.

23 Q. I can tell you just the law in Texas. In
24 order to be eligible for the death penalty, you have got to
25 be 17 or over.

1 A. Okay. I think sometimes 16 year olds know
2 exactly what they're doing. So --

3 Q. Sure. Again, what the law requires is kind of
4 like No. 1, is that jurors, at least, kind of have an open
5 mind. If they hear something that's mitigating, they can go
6 with it. If they don't, it will be fine.

7 A. It would have to be placed out in front of me.
8 I just can't really put my finger on anything.

9 Q. Do you think that you can keep an open mind at
10 this phase of the trial?

11 A. Yes.

12 Q. For the mitigating evidence?

13 A. Uh-huh, yes.

14 Q. Do you have any questions about the scheme and
15 how we do things or any questions about anything we've
16 talked about or capital murder in general?

17 A. No. I'm quite sure that you will spell it out
18 clearly and make sure of that, so I really at this point am
19 just kind of here to see whether or not I'm, you know, am
20 going to be placed on the jury. I really don't have any
21 questions right at this point.

22 Q. How do you feel about potentially making the
23 jury? Do you have any thoughts?

24 A. Sure. It will be interesting. I mean,
25 everybody likes to, you know, get involved in something.

1 But, you know, I mean, it doesn't make my life one way or
2 the other. I mean, I can go or not. I mean, I don't live
3 my life by being curious about others.

4 Q. I think that's all I have. Thank you, ma'am.

5 CROSS-EXAMINATION

6 BY MS. BUSBEE:

7 Q. My name is Brook Busbee and I'm one of the
8 lawyers on the other side and, fortunately, the State has to
9 pretty much outline the law to you, and so I get to be a
10 little bit freer in the questions that I get to ask you
11 about.

12 I want to explain something to you first
13 because I think it helps people answer questions if they
14 understand how they got in that chair. You saw how many
15 people came in the morning that you were there. I think it
16 was 2,500 plus?

17 A. I know the room was full.

18 Q. It was a huge number of people. We had that
19 same amount of people in the afternoon.

20 A. Wow.

21 Q. And they filled out stacks and stacks of these
22 questionnaires and you have got yours in front of you. We
23 don't -- we don't even bother wasting the taxpayers' money
24 copying the people who say that they would give the death
25 penalty for jaywalking, number one, because they, obviously,

1 would not be somebody we should talk to, and we don't talk
2 to people who couldn't assess the death penalty ever,
3 because that would waste everybody's time and money, too.

4 So we have this smaller group of people.
5 But that is not the people we talk to because we use 20 or
6 17 pages here. We read those and then we meet and the two
7 sides meet. And you wouldn't believe how few people get in
8 the pile of people we want to talk to because they said
9 something on their questionnaire that makes one side or the
10 other think that they would be too much for the State or too
11 much for the defense, and so we kind of winnow it out until
12 we have some people that both sides agree are reasonable,
13 intelligent, that sort of thing.

14 But I want you to understand that you
15 already have -- we already know that you can follow the law.
16 We're okay with that, you know. We, both sides, are
17 comfortable with talking to you about your service and
18 whether or not you should sit on the jury.

19 And the reason I'm going into this is
20 because a lot of people, and it's human nature, you get on
21 the witness stand and you feel like you are being -- you are
22 on trial like your citizenship is on trial. Yes, I can
23 follow the law. We know that everybody who finally makes
24 the cut to get here in court can follow the law. We are
25 totally okay with that.

1 But the thing that you are really here
2 for is that we, as Mr. Wirsky said to you, there's lots --
3 this is an emotional sort of case. Taking someone's life is
4 involved in the prosecution of it and the defense of it.
5 Someone's life was taken. Someone else's life might be
6 taken. So we know people who didn't have any feelings about
7 this or, you know, emotion about it, we both would be
8 worried about having you on the jury.

9 We just need to know how you actually
10 feel. We know that you know what the law is. But how you
11 would feel about it, because if we get somebody on the jury
12 who we have not pursued this with or we haven't gotten their
13 true feelings about it, it could be bad for either side and
14 we would really like to only do this one time.

15 A. Right.

16 Q. So here's something that I find most people --
17 you know, nobody at this table hasn't been practicing law
18 for a long time, so we forget how we used to think before we
19 were lawyers. But I start figuring out, usually, in the
20 second week, which is what we're in, that most people
21 logically do not get the difference between finding someone
22 guilty and giving the death penalty, because you say you
23 committed a capital murder, most people think that's a snap
24 decision. That's a death sentence. But truly that's not
25 so, obviously, because there's way too many cases that fall

1 into those categories and there's no way that all those
2 cases could go to trial, even if we had the resources, or
3 should go to trial.

4 So we spend a long time talking to people
5 to make sure that they are comfortable -- not comfortable
6 with the law, but comfortable with sitting on a jury like
7 this.

8 So having said that, you talked about --
9 I would like to know how you feel about it because we're
10 trying to get people -- we don't want to make any citizen in
11 Dallas County uncomfortable or unhappy.

12 We're going to assume now that you are on
13 a jury that has found someone guilty of the offense of
14 capital murder. They have knowingly and intentionally
15 committed a murder and it falls into that category of
16 capital murder, police officer, child, fireman, in the
17 course of a robbery, something that makes it capital.

18 And when we're talking about Special
19 Issue No. 1, you said that you would really -- you would
20 need to hear some evidence, some additional evidence, to
21 prove to you that he wasn't a future threat to society?

22 A. Um, I'm not sure on No. 1 that that's the
23 case. Well, let me back up. When you say a future threat
24 to society, to say a solid yes I would like to hear
25 everything. But when he asked me -- he said, what would

1 your automatic response be? I said normally, naturally,
2 because I'm a human being, my natural response would be,
3 yeah, you have been in jail, you broke out, you know, that
4 would be my natural response. But -- for No. 1.

5 Q. Okay.

6 A. But going on to No. 2 and 3, there's not a
7 natural response.

8 Q. Okay. And that's what we needed to know is
9 how you feel about things. So, in reality, once you have
10 decided that someone had committed a capital murder as we
11 defined it for you, you feel that they're a future danger,
12 and you would need to hear something to convince you that
13 they weren't?

14 A. That's correct. And in specifically this
15 case, because there's no denying that that person was there
16 at the time, then that yes is kind of automatic. Now, in a
17 case where whether or not you had to prove they actually
18 were even there, I mean, then that's not an automatic
19 response for No. 1.

20 Q. Because of what you know about this case, you
21 already have an opinion about Special Issue No. 1?

22 A. I read enough to know that they were in jail
23 already. For what, I don't remember. So that's where my
24 automatic response would come in to some degree that they
25 are already a threat to society.

1 Q. Okay. So that opinion has been formed and you
2 would automatically answer that 1 and then go on to 2 and 3?

3 A. Nos. 2 and 3 are not clear to me.

4 Q. Okay. Because you haven't heard any other
5 particular details?

6 A. I don't have anything -- I don't.

7 MS. BUSBEE: Could we approach, Your
8 Honor?

9 THE COURT: Agree? Ms. Stringer, we
10 appreciate your time and service today. The parties have
11 agreed that your opinion on Special Issue No. 1 and how much
12 you know about this case, simply they are not going to allow
13 you to serve on this jury. They have agreed to excuse you.
14 We thank you for your time and service to this Court and you
15 are free to go. Thank you.

16 [Prospective juror out]

17 (Recess)

18 THE COURT: Ms. Morton.

19 [Prospective juror in]

20 THE COURT: Thank you. You may be
21 seated. Good afternoon, Ms. Morton, how are you?

22 PROSPECTIVE JUROR: I'm fine.

23 THE COURT: Have you had an opportunity
24 to read the guide that I provided for you?

25 PROSPECTIVE JUROR: Yes.

1 THE COURT: I know it's a lot of law to
2 give someone and we don't expect you to understand it from
3 front to back. That's what the attorneys are going to visit
4 with you about, is to explain the law in some more detail
5 and try to help you understand how it all interrelates.

6 One thing you told us is I've sworn to
7 tell the truth. That's all the lawyers want is your honest
8 opinions. If you would, if you don't understand the
9 questions, you don't understand, just please say explain it
10 again, give me another example, whatever.

11 PROSPECTIVE JUROR: Okay.

12 THE COURT: What my job is, is to do two
13 things. One is to be sure you understand the law. Once you
14 do, can you follow the law? That's the main objective here.

15 So you have had an opportunity to read
16 the guide. Do you have any questions on what you have read
17 so far?

18 PROSPECTIVE JUROR: Not right at this
19 moment, no.

20 THE COURT: Are you able to serve this
21 Court for two weeks beginning on November 10th?

22 PROSPECTIVE JUROR: Yes.

23 THE COURT: Very well. Mr. Shook, you
24 may inquire.

25 MR. SHOOK: May it please the Court.

1 YVETTE MORTON,
2 having been duly sworn, was examined and testified as
3 follows:

4 DIRECT EXAMINATION

5 BY MR. SHOOK:

6 Q. Ms. Morton, my name is Toby Shook. I'll be
7 speaking to you on behalf of the State today. Have you been
8 down on jury duty before?

9 A. Never been picked. I've been at jury duty.
10 This is my third time.

11 Q. Okay. Usually, you know, then, that the jury
12 selection is done from a panel --

13 A. Right.

14 Q. -- in most cases. But because it's a death
15 penalty case, the law prescribes for us to have this method
16 where we speak to each juror individually. We don't mean to
17 make you feel like you are the one on trial or under
18 scrutiny, but you get to ask questions whenever you want to
19 during this process and feel free to do that.

20 A. Okay.

21 Q. We'll go over some of the things you put in
22 your questionnaire and we'll talk about capital murder and
23 how you feel about that and some of the laws that apply.

24 A. Okay.

25 Q. Did you -- you have lived in the Dallas area

1 here for quite some time; is that right?

2 A. Yes, I have.

3 Q. And you work now at Mustang --

4 A. Interest.

5 Q. What do you do with them?

6 A. I do accounts payable.

7 Q. The Judge told you that our trial date is
8 November 10th and we're pretty firm on the belief that it
9 will take two weeks. That won't present a problem for you
10 on your duties there; is that right?

11 A. No.

12 Q. Good. Let me ask you, we obviously inquire on
13 the questionnaire about anyone you have known that's been
14 through the criminal justice system and you had an
15 ex-husband that had a couple of public lewdness charges back
16 in 1980 and 1995?

17 A. Right.

18 Q. Tell us a little bit about what you know, if
19 anything, about the background of those cases.

20 A. Well, he was in a public park picking up men
21 and then he went to Dallas. In '95 he was in a restroom at
22 White Rock Lake and was arrested by a police officer that
23 was undercover.

24 Q. Was he tried on any of those?

25 A. Yeah. He was both. I think he got probation

1 on both of them.

2 Q. Did you attend the trials?

3 A. No, I did not. The first one I didn't really
4 know about and the second one, I did, but I didn't go to any
5 of them.

6 Q. You felt like he was treated fairly --

7 A. Yeah.

8 Q. -- by the criminal justice system and by the
9 police?

10 A. Right.

11 Q. And then you also had a nephew that had some
12 type of theft case?

13 A. Right. He -- well, he broke into someone's
14 apartment, stole some things, stored them in my friend's
15 apartment and my brother, his father, turned him in. He was
16 treated fairly, I think.

17 Q. Feel he was treated fairly?

18 A. Yeah. He broke in. He should have gotten
19 caught.

20 Q. Okay. Let me ask you how you feel, then,
21 explore with you a little bit your feelings about the death
22 penalty. You know the State is seeking the death penalty,
23 so --

24 A. Right.

25 Q. -- we talk to everyone about how they feel

1 about capital murder. Do you agree with the law that we
2 should have a death penalty?

3 A. Yeah.

4 Q. What reasons do you think -- what purpose do
5 you think the death penalty serves?

6 A. It takes people off the streets that commit
7 crimes against people that result in their death.

8 Q. Okay. What types of cases do you feel should
9 be considered for the death penalty?

10 A. Cases against elderly and children or anybody,
11 really.

12 Q. Have you ever followed any cases in the media
13 locally or nationally that you thought were death
14 penalty-type cases?

15 A. I didn't really follow them. I just read
16 about them. I don't really.

17 Q. Do you remember the names of them or what
18 types of cases they were?

19 A. Andrea Yates, where she drowned her children,
20 and what was the other lady that drowned her two in the car?

21 Q. Susan Smith?

22 A. Susan Smith, yeah.

23 Q. How did you feel about the outcomes of those
24 trials?

25 A. Well, I don't know. They were both sentenced

1 to life in prison?

2 Q. Yes, ma'am.

3 A. Right. They should have, I think, gotten the
4 death penalty for taking their child's life.

5 Q. Okay. But you wouldn't limit the death
6 penalty just to children?

7 A. No.

8 Q. You're fine with it for other types of murder
9 cases?

10 A. Right.

11 Q. We ask a lot of questions about the death
12 penalty in the questionnaire.

13 A. I know.

14 Q. And one of them having to do with the death
15 penalty is, we ask, would it be important in deciding
16 whether a person received a death or life sentence in a
17 capital murder case or what would be important? And you had
18 written down how much remorse they had.

19 What were you thinking when you wrote
20 that down? What was going through your mind, if you recall?

21 A. I don't remember because it was in May.
22 Whether -- could you repeat that again. I'm sorry.

23 Q. The question was what would be important to
24 you in deciding whether a person received a life sentence or
25 a death sentence and you had written how much remorse they

1 had.

2 A. Right. If they really, really were remorseful
3 in killing someone, possibly the life.

4 Q. How do you think you can tell if a person were
5 truly remorseful?

6 A. I think in their actions, the way they act,
7 the way they look -- not really the way they look, but just
8 in their actions mainly.

9 Q. And we also always ask, and I don't know what
10 significance it is, because it means different things to
11 different people, but if you believe in the death penalty,
12 how strongly you believe in it or hold that belief, and we
13 kind of give you a 1 through 10 and you picked a 5.

14 A. Yeah.

15 Q. Why did you decide on a 5?

16 A. Well, I don't know really. It just -- it
17 could go either way, you know, depends on certain things.

18 Q. If it were up to you, would you have the death
19 penalty for just certain types of murder cases or would you
20 expand it to other crimes as a possible punishment option?

21 A. Like what other crimes?

22 Q. Just anything you personally feel. Some
23 people have told us, hurt children, you know, not killing
24 them, but, you know, injuring a child in a bad way or for
25 crimes of rape, that sort of thing.

1 A. Would I --

2 Q. Some people, when you ask them, they say,
3 well, I would have the death penalty for murder cases --

4 A. Murder cases, yeah.

5 Q. -- but also for rapists or people that injure
6 children or elderly people and that sort of thing. And I
7 was just wondering how you felt about that. Other people
8 tell us, I would just probably keep it for when a life's
9 taken.

10 A. Right. Most likely, yeah. I don't know. I
11 think murder is a really bad thing. Of course, other things
12 are worse, too, but I don't know if it requires a death
13 penalty.

14 Q. Okay. In Texas the death penalty is reserved
15 just for murder cases and then only certain types of murder
16 cases. We have some brutal killings. I could pull a gun
17 out now and put it to Mr. Wirskye's head, and if I didn't
18 like his tie or something he said to me, I could shoot him
19 and laugh about it, but I couldn't get the death penalty. I
20 could get a life sentence.

21 The death penalty is reserved for
22 intentional murders that occur during a felony, such as
23 robbery, burglary, or an arson or a rape, murder of specific
24 individuals, such as a police officer, fireman on duty,
25 murder for hire, like a hitman situation. More than one

1 victim could be a death penalty situation, murder of a child
2 under the age of six, multiple victim situations. Those
3 specific instances are the types of murder cases that are
4 reserved for the death penalty.

5 Are you familiar with the procedures of
6 how the trial takes place in a death penalty case?

7 A. No.

8 Q. The trial is divided into two parts. There's
9 the guilt/innocence stage where we have to prove the
10 indictment. If we don't do that, obviously, it's a not
11 guilty finding. If we do, we move to the punishment phase.

12 And in the punishment stage we get these
13 questions and we will go over these more in a minute. But
14 the questions are basically this, the State has to prove
15 that the defendant is a continuing danger. It's a yes or no
16 question. We have to prove that he either caused the death
17 or anticipated that a life would be taken, and then there's
18 a mitigating question where the jury is to determine if
19 there's sufficient mitigating evidence that a life sentence
20 should be imposed, rather than a death sentence.

21 But if the jury answers yes, yes, and no,
22 the Judge has no choice. The Judge would sentence the
23 defendant to death. If the jury answers the questions any
24 other way, it's a life sentence. But those are the only two
25 possible outcomes, once the defendant has been found guilty,

1 is a death or life sentence. Is that clear?

2 A. Yes.

3 Q. Are you familiar with the method of execution
4 in Texas?

5 A. Lethal injection.

6 Q. That's correct. It's in the news a lot. They
7 cover certain executions more than others. They usually
8 cover every execution. Sometimes it's just a blurb and
9 sometimes it's a full-page article describing the execution.

10 I know last night in the news there was a
11 long news story about an execution in another state that
12 occurred in Florida. So they do make the news a lot.

13 The procedures are the same. If the
14 defendant were found guilty and these questions were
15 answered yes, yes, and no, Judge Cunningham would have no
16 choice but to sentence the defendant to death. He would be
17 placed on death row where he would wait for some time.
18 Somewhere down the line Judge Cunningham would then actually
19 issue a date of execution.

20 All executions in Texas take place at
21 6:00 p.m. in Huntsville, Texas. He would be placed,
22 actually brought in probably the day before, to that prison
23 in Huntsville. Near the execution chamber he would have a
24 cell there, on the day of his execution be allowed to meet
25 with his family, a minister, given a last meal -- you know,

1 the news likes to talk about that -- if he could eat it.

2 At 6:00 p.m., though, ten minutes to 6:00
3 p.m., actually, they come and take him to that execution
4 chamber by force, if necessary. He's placed on a gurney,
5 the kind that you see in a hospital, but there is leather
6 straps constructed on this gurney. You may have seen it in
7 the news. He would be secured down, so he would be
8 immobile.

9 Needles would be placed in his arms.
10 Tubes would go to another room where the executioner is.
11 Witnesses are then brought in to view the execution, maybe
12 family members of the defendant and family members of the
13 victim. He's allowed to give a last statement, which is
14 almost always printed in the newspapers, where he may claim
15 his innocence. He may not.

16 After that statement is given, the warden
17 gives a signal and lethal substances are then injected which
18 work very quickly. They immediately stop his heart, they
19 collapse the lungs, air is forced out, he's conscious at
20 this time and he quickly dies. I don't mean to be morbid --

21 A. That's --

22 Q. -- but, you know, it's one thing when we talk
23 about generally do you believe in the death penalty --

24 A. Yeah.

25 Q. -- and then it's another one when you get a

1 summons and you get down here and you realize this is a
2 capital murder case and the State is seeking the death
3 penalty.

4 A. Right.

5 Q. And it's quite another thing, once you are
6 sitting in the room and see the man. And I put all my cards
7 out on the table. It's our goal in this case, we feel we
8 have the type and quality of evidence to prove the defendant
9 guilty, and to prove to the jury that these questions should
10 be answered in such a way that the defendant will be
11 executed in the manner I described.

12 Some people can make these decisions and
13 other people cannot, because it would weigh on their
14 conscience too much.

15 A. Yeah.

16 Q. And that's fine, if they feel that way. But I
17 like to go through this slowly and make sure a juror
18 recognizes that, so they can come to grips with that before
19 they are placed on the jury. Once you are placed on the
20 jury, you can't do anything about that. Before that, if
21 there are reservations, we need to know that and we can
22 explore that avenue. But there aren't any right or wrong
23 answers at this point.

24 A. Right.

25 Q. Now that we've talked about it, you told me in

1 general that you do believe in the law. Now that you
2 realize and filled out the questionnaire and now come down
3 here and gone through this, do you feel that this is the
4 type of case that you could sit on and make these decisions,
5 knowing that the defendant, if this is proven by the State
6 in such a way, will be executed in the manner I described?

7 A. I don't really know. You know, like you say,
8 thinking about it, can you do that, I'm not sure if I could
9 or not. But --

10 Q. Some hesitancy there?

11 A. Just a little, you know, but I don't know.
12 How would I feel if it was my relative, you know, being
13 executed. I don't know, taking a life, too, that's --

14 Q. It's pretty significant.

15 A. Yes, it is. It's really scary.

16 Q. We have some jurors who tell us, I'm opposed
17 to the death penalty on religious grounds, many times --

18 A. Right.

19 Q. -- and they'll tell us straight up, look, it's
20 something that I have always believed in and can't make
21 those decisions. Don't care what your evidence is, I can't
22 make the decisions. And they are excused from jury duty for
23 that particular case. They would be fine on a burglary
24 case, maybe a DWI, or civil case of some sort.

25 And we have other jurors who tell us they

1 are for the death penalty and they want it in every case.
2 They really can't be fair because they are prone to it,
3 obviously, and they are excused. We have some jurors who
4 are for the death penalty and can actually make the decision
5 and that's fine. They are qualified under the law.

6 And we have other jurors like yourself
7 who tell us philosophically I'm for it --

8 A. Right, but just coming down to it.

9 Q. -- but it would weigh on me and it's just
10 something that would weigh on my conscience and that's
11 something that I can't forget. It's something that is going
12 to affect my deliberations. I can't be like a computer and
13 just plug this stuff in.

14 A. Right.

15 Q. It's going to weigh on me and I may not be
16 able to make my decision just based on the evidence. That
17 would weigh in there. I don't want that responsibility at
18 this particular time in my life. I couldn't handle that --

19 A. Yeah.

20 Q. -- and it would affect me. And if you feel
21 that way, that's fine, too.

22 A. Yeah.

23 Q. You know, because the law contemplates some
24 jurors feeling that way and then they are not qualified.
25 Doesn't mean you are a bad citizen. It just means that you

1 will get a summons another time to come down on a burglary
2 case or something like that.

3 A. Yeah.

4 Q. Would you be more comfortable sitting on a
5 type of case that did not involve the life and death issues,
6 but maybe if they were criminal cases, jail time or
7 something like that?

8 A. Probably, yeah.

9 Q. That wouldn't weigh on your conscience?

10 A. No.

11 Q. It's, obviously, holding a person's life in
12 your hand?

13 A. Right.

14 Q. And are you telling the Court that this is
15 just something that is not going to go away, obviously? I
16 see you on the stand. It's something that you are
17 uncomfortable with?

18 A. Yeah.

19 Q. And you are just not going to be able to
20 ignore these reservations or these feelings?

21 A. I don't think that I can.

22 Q. I appreciate your honesty. That's why I took
23 the time to go through it.

24 A. Right.

25 MR. SHOOK: Your Honor, I believe we have

1 an agreement.

2 THE COURT: Ms. Morton, I thank you for
3 your time and service here today, especially your honesty.
4 By your last answers, you really looked at it and said, I
5 just can't do it. We appreciate that. These cases aren't
6 for everybody, so don't feel bad about it. You are just
7 being honest. That's all we ask. The parties have agreed
8 to excuse you, so you are free to go. Thank you.

9 PROSPECTIVE JUROR: Thank you.

10 [Prospective juror out]

11 THE COURT: Ms. Echols available?

12 [Prospective juror in]

13 THE COURT: Good afternoon, Ms. Echols.
14 How are you?

15 PROSPECTIVE JUROR: Fine. This is all
16 new to me.

17 THE COURT: Good. We're going to get you
18 up to speed, so try to relax. This can be somewhat
19 intimidating. This is as informal a process as we can do at
20 this point. The objective is for you to be able to talk to
21 us and the lawyers to explain the law to you, try to give
22 you a head start.

23 We gave you a guide to let you try to
24 think about the issues we'll be discussing and there's your
25 copy of your questionnaire that you filled out for us in

1 May. I know you don't remember that, so if they ask for a
2 specific question, refer to your answer. Would you explain
3 further? You can look at what you wrote and not remember
4 what you were thinking about.

5 Bottom line here, my job is to be sure
6 that you understand the law we're dealing with. Once you
7 understand the law, can you follow the law? Seems real
8 simple to me, but that process can take up to about an hour
9 and a half to bring you up to speed.

10 Do you have any questions about what you
11 have read thus far?

12 PROSPECTIVE JUROR: No, not yet.

13 THE COURT: All right. Do you have any
14 problems serving the Court for a two-week trial beginning on
15 November 10th?

16 PROSPECTIVE JUROR: Not right now, I
17 don't.

18 THE COURT: Mr. Wirskye?

19 MR. WIRSKYE: May it please the Court.

20 BRENDA ECHOLS,
21 having been duly sworn, was examined and testified as
22 follows:

23 DIRECT EXAMINATION

24 BY MR. WIRSKYE:

25 Q. Ms. Echols, how are you this afternoon?

1 A. Nervous.

2 Q. Don't be nervous.

3 A. I've never done this before.

4 Q. That's fine. We know that. My name is Bill
5 Wirskye. I'm the Assistant District Attorney that is going
6 to visit with you for the next few minutes. We apologize.
7 We kind of make you feel like you're on trial. But we know
8 you're not and hopefully in a few minutes the awkwardness
9 will wear off and we'll be able to, basically, have a
10 discussion with both sides.

11 What I would like to do is maybe run over
12 some of the information that you gave us in your
13 questionnaire, I know you haven't looked at that, but you
14 have got it in front of you, talk about, a little about
15 maybe how you feel about the death penalty, and talk about
16 some of the laws and rules that might apply in a death
17 penalty case.

18 What's going through your mind when you
19 got called back down here?

20 A. Oh, God, mostly.

21 Q. Why did you think that?

22 A. Well, it's just like I said, I have never done
23 this before and I don't like the unknown and I didn't really
24 know, like I said, after a while it would be comfortable,
25 but that's the only reason because I don't know. It's just

1 kind of scary.

2 Q. Okay. Were you worried about this being, in
3 particular, a death penalty case where the State is seeking
4 the death penalty?

5 A. No, not the death penalty, no.

6 Q. You have never been a juror on any other type
7 of case; is that right?

8 A. No.

9 Q. This is all new to you?

10 A. I go to the top when I do things the first
11 time.

12 Q. Odds are you probably won't get called back
13 down on a death penalty case. You told us that you are, I
14 guess, generally in favor of the death penalty; is that
15 right?

16 A. In favor -- on circumstances. It depends on
17 the whole circumstance.

18 Q. Do you think we should have it for some
19 crimes?

20 A. Yes.

21 Q. Okay. What crimes -- when you are thinking
22 about the death penalty, what type of crimes do you think it
23 might be appropriate for?

24 A. Mostly if they kill someone else. I mean, I
25 understand -- I don't really understand, but I see the --

1 like life, you know, behind bars and also they are there and
2 I just feel that, you know, why should they be alive when
3 the person, whoever they shot or killed or whatever they did
4 to them, isn't alive?

5 Q. Okay. Any other cases you think where it
6 might be appropriate, other than murder, the taking of a
7 life?

8 A. Yeah, things that are done to children.

9 Q. Crimes against children?

10 A. Yes.

11 Q. Okay. And we hear that a lot. A lot of
12 people feel very strongly about that.

13 A. Uh-huh.

14 Q. Any other type crimes that comes to you? I
15 know you probably haven't been thinking about this.

16 A. No. It's based on the circumstances. I mean,
17 I have no problem, you know, with it, but I figure whoever
18 it was or whatever happened that they killed, why should
19 they still be alive? They didn't -- this person, especially
20 when this person was innocent, or something, whoever it is,
21 innocent bystander in the wrong place at the wrong time,
22 whatever, they're sitting there happy. I don't know if
23 they're happy, but they are still alive and these people are
24 dead for no good reason.

25 Q. Is there any particular case that you may have

1 seen on TV or read or heard about that comes to mind and you
2 say, gee, that's a good case for the death penalty or that
3 person deserves the death penalty?

4 A. Not right at this second.

5 Q. Fair enough. Looking at your questionnaire,
6 we ask people to kind of -- I think it's on page 4, rank
7 yourself on how strongly you believe in using the death
8 penalty on a scale of 1 to 10, kind of towards the top of
9 the page, third question. It asks you to rank yourself 1 to
10 10, 1 being the least, 10 being the most, how strongly do
11 you believe in using the death penalty and you gave yourself
12 a 10.

13 A. Uh-huh.

14 Q. A 10 for 10 and I -- just kind of explain that
15 to me or if you remember what you were thinking when you
16 gave yourself a 10.

17 A. Basically, more or less what I just said, just
18 depends on the circumstance. I know there's people that
19 have problems with putting people to death, but they put
20 someone to death, so why not? You know, they shouldn't be
21 breathing, in my opinion, because the other person isn't.

22 Q. And, you know, we talk to a lot of people and
23 they come in and find out this is a death penalty case and a
24 lot of people tell us, very frankly, that's not the type
25 case for me. I'm uncomfortable with it. What I hear you

1 saying, you are not necessarily uncomfortable with it, but
2 you don't have any objection to being a juror in a death
3 penalty case where the death penalty is an option; is that
4 right?

5 A. No.

6 Q. You told us on the first page that you kind of
7 believe in an eye for an eye?

8 A. Uh-huh.

9 Q. Is that from the way you were raised or church
10 or --

11 A. I don't know if you can call it the way I was
12 raised. It's more or less my belief, I mean, and, honestly,
13 some of it goes to whatever the deal is with adults, but
14 mostly children. Or if you want an example of -- the eye
15 for an eye, well, I can't do it, because it's not legal.
16 But, I mean, if they put an innocent baby and scald it to
17 death, you know, they should die a slow death, too, just
18 like the baby, because they had no control, they were too
19 innocent, they couldn't fight back, that kind of deal.

20 Q. We hear people say that. People should suffer
21 the same death as the victims.

22 A. And slow.

23 Q. Do you think of murder cases that maybe don't
24 call for the death penalty, taking of a life or knowing and
25 intentional taking of a life where the death penalty

1 wouldn't be appropriate?

2 A. I can't answer that right now. It's hard to
3 think about certain ones or what I've heard. I'm sure on TV
4 I have an opinion about a lot of things and what it is, if I
5 don't like it or something, but I can't right now.

6 Q. Okay. Let me ask you this. On page 3 we
7 asked you if you had heard anything about this case, the
8 case we're here on today.

9 A. Uh-huh.

10 Q. And you, like just about everybody we've
11 talked to, answered that question yes, that you have heard
12 some things about the case. I was just wondering what you
13 remember hearing about this case.

14 A. First of all, scared when they escaped, but I
15 just heard they had escaped and they worked their way and
16 where they were going just like everybody else. The only
17 thing I heard was that, I mean, by the news. That's all
18 news and things like that and gossip that it was the -- they
19 were robbing the place or broke into the place to steal the
20 guns or whatever they needed to finish the job.

21 Honestly, I can't at this point remember
22 if there was someone in the building. I'm thinking because
23 it was Christmas Eve, it was closed. But the police
24 officer, that I remember, was just doing his job, burglar
25 alarm, whatever happened, and he was just out there.

1 I cannot honestly remember who fired
2 what, but, I mean, what I remember, let's put it that way,
3 it was only one officer. Why did they have to shoot him? I
4 mean, there's seven to his one or whoever was there. So,
5 basically, that's probably what everybody else has heard.

6 Q. And that's pretty, like I said, almost
7 everybody we talked to has heard different degrees of
8 information. Just because you have heard about the case,
9 doesn't mean you are disqualified from being a juror. What
10 the law requires of a potential juror like you, in order to
11 give a fair trial to both sides, very frankly, that if you
12 were a juror, you would just base your decision or your
13 verdict based on what you hear in the courtroom.

14 A. Uh-huh.

15 Q. Not something you may have heard a year or two
16 ago or read in the paper.

17 A. Huh-huh.

18 Q. Do you think the things that you have heard
19 you could kind of, I guess, move to the back of your mind
20 and just base your verdict on what you hear in the
21 courtroom?

22 A. Yes. Because of another point that I believe
23 in as far as penalty and that's I do not -- which it's in
24 there, I do not believe -- I don't believe -- not this case
25 aside, I don't believe the -- unless you have the so-called

1 smoking gun, that you should have the same penalty as the
2 other people. I mean, unless they are all -- all of them
3 were shooting a gun and whoever he was unlucky to hit him,
4 then I don't think they should have the same thing. I don't
5 believe they should all be put to death. He should be
6 penalized or punished or whatever, but not -- I don't care.
7 One gets death, one gets life, it's still a difference.

8 Q. You anticipated perfectly the next question I
9 was going to ask. I think I know how you feel about it.
10 Let me go ahead and ask you my question. You know, a lot of
11 times we think about a death penalty case, you think about
12 one person acting alone. And as you already are thinking
13 about, crimes are committed sometimes by more than one
14 person.

15 A. Uh-huh.

16 Q. For lack of a better term, the smoking gun.
17 You would have the guy that pulled the trigger.

18 A. Right.

19 Q. The gun that actually caused the death.

20 A. Right. They actually caused the death.

21 Q. But you may have some accomplices as well.

22 A. Uh-huh.

23 Q. They were there and may have even
24 participated. And they could be charged with capital murder

25 --

1 A. Uh-huh.

2 Q. -- as well. We talk to a lot of people maybe
3 such as yourself that think, you know, I'm strongly in favor
4 of the death penalty, don't get me wrong, but I'm only in
5 favor of it for those people that actually had the smoking
6 gun --

7 A. Uh-huh.

8 Q. -- or pulled the trigger or caused the death.
9 With respect to these other people that didn't do it, you
10 know, I may lock them up for life.

11 A. Uh-huh.

12 Q. But, you know, I don't believe in taking their
13 life because they didn't take a life. Is that kind of where
14 you are?

15 A. Yeah. It's hard to explain, but it's like
16 anything from minor to major. I mean, the person, if the
17 person was there, there's an intent. I mean, whatever, but
18 he should be judged and punished by what -- if you find out
19 what exactly his part of it was, like it was whoever was
20 there at the time, Texas -- whatever they were -- if all of
21 them were firing guns and nobody knows who exactly killed
22 this man, then you have to figure that part out, too. If
23 they all fired guns, then you have got a problem. You have
24 got to figure out who did what exactly.

25 Q. Well, let me tell you this. I'll be up front

1 with you. The law allows us to prosecute people who are
2 accomplices, nontriggermen. And that's what we're doing in
3 this case. We're prosecuting Mr. Murphy as a nontriggerman,
4 as an accomplice.

5 A. Uh-huh.

6 Q. And I think I know where you are going. I
7 think I know what your answer will be from what you told me.

8 A. Uh-huh.

9 Q. But it sounds like in that case where you have
10 somebody who wasn't shooting, you know, didn't cause the
11 death, I guess just your beliefs or your morals or your
12 conscience --

13 A. Uh-huh.

14 Q. -- tells you that the death penalty just
15 shouldn't be available for that?

16 A. Not just available, I guess, but, you know.
17 Okay, if you have a group, the whole group -- if like it was
18 distinctive point blank, okay, one person shot and killed
19 the officer, okay, then his punishment should be very much
20 severe than the other ones. Like I said, if he gets death,
21 that's not to say the others, because they were there
22 participating, had the same idea, just somebody did it.

23 Q. Uh-huh.

24 A. That they shouldn't be in there for life. I'm
25 not saying let them off, no.

1 Q. Sure.

2 A. But I just don't think that people, you should
3 line them all up if there was more than one, and say, okay,
4 you know, go for it. But I don't think they should all be
5 punished the same, depending on what their part is in it and
6 whatever the law allows.

7 Q. Let me tell you a little bit about the law and
8 give you an example and kind of see what you think about
9 this. One of the laws that has to do with accomplices, we
10 call conspiracy.

11 And just to give you an example, say
12 Mr. Shook and I agree or conspire or enter a conspiracy to
13 rob a bank. The plan is he's going to take the gun in. I'm
14 going to go in, and while he's holding everybody up, I'm
15 going to grab the money and we're going to make a clean
16 getaway and no one is supposed to get hurt.

17 We go in to rob that bank. And for
18 whatever reason he pulls the trigger and kills someone,
19 commits capital murder. I never had any intent that that
20 would happen. I just signed up for the bank robbery. I
21 never wanted anybody to get hurt. That wasn't my intent.

22 The law actually allows not only
23 Mr. Shook to be prosecuted for the death penalty, but for
24 me, even though I didn't have any intent. And there's a lot
25 of people -- I see you turning your head. There are a lot

1 of people that disagree with that and that's fine, if you
2 do.

3 A. Like, why would you get the same charge? I
4 mean, you were there through the whole -- you were there for
5 the whole circle, but there was something one step too far.

6 Q. But it sounds like from what you are telling
7 me, under that situation because I didn't have the intent,
8 that sounds like it is very important to you, because I
9 didn't have the intent, that the death penalty should be off
10 the table, shouldn't even be an option --

11 A. No, because he shot and killed somebody.

12 Q. -- for him?

13 A. For him. For you, I mean, they can -- your
14 lawyer can go -- you can go for anything you want to. I
15 just don't believe your punishment would -- unless you can
16 prove something different, can, you know, be as bad. Like I
17 said, it could be one step under, life in prison, instead of
18 just putting you to death, instead of just sitting there
19 waiting to die. But it's not saying you are going to go
20 scot-free, no, huh-huh.

21 Q. No. You can lock me up for life.

22 A. I don't think that you should get death,
23 because he's the one that -- he murdered. He killed an
24 innocent person that's doing their job.

25 Q. And that's why we talk to people. Because the

1 law allows us to prosecute these type cases and we don't
2 want to put you on the jury when you have morals or a
3 conscientious objection. We don't want to make it hard for
4 you and what your heart tells us and what your head tells
5 you, versus what the law allows.

6 A. You just have to prove to me. It's not
7 because -- use him as an example. Just because you went for
8 capital, he shot -- it's not to say I'll go for the death
9 penalty, but I don't believe in the same thing for everybody
10 that's there.

11 Q. Okay. Let me ask you to do this. You
12 probably looked at them briefly, but see these Special
13 Issues that are up on the wall? Let me ask you to take a
14 few minutes and read through the three of those.

15 A. (Prospective juror complies.) Okay.

16 Q. Let me ask you this. A lot of people don't
17 realize that, you know, when you have a death penalty case
18 in Texas, you don't just kind of vote for -- as a jury you
19 don't vote for just the death sentence versus a life
20 sentence. We ask you to answer these three questions. And
21 depending on what your answers are to these three questions,
22 that kind of determines what the person's punishment is,
23 that type thing.

24 And this first question up here, first
25 Special Issue, I like to call them questions, deals with

1 whether, you know, assuming before you even get to that
2 question, you have found somebody guilty of capital murder.

3 A. Uh-huh.

4 Q. Okay. This first question asks the jury to
5 decide whether there's a probability that the defendant
6 would commit criminal acts of violence such that he would be
7 a continuing threat to society, a continuing danger. Some
8 people call it a future danger to society. And, you know,
9 the question starts off with a no and it's up to us to prove
10 it to you yes.

11 We get a lot of people that feel very
12 strongly about the death penalty and give themselves a 10
13 for 10, much like you do. And they say, Mr. Wirskye, if I
14 found somebody guilty of capital murder, okay, I found that
15 they are guilty of capital murder, when I get to this first
16 Special Issue, this first question, I'm going to think that
17 they are a future danger to society because they are a
18 capital murderer. Maybe they have been violent once and I'm
19 going to think there's always a probability of them being
20 violent again.

21 I see you shaking your head yes. It's
22 kind of common sense to it. There's a little common sense
23 to it, but what do you think about that?

24 A. Depends on the circumstances.

25 Q. Okay.

1 A. Okay. The circumstances being -- it's hard --
2 an example, this is the first time somebody has ever been in
3 trouble, you know, say they were attacked, defending
4 themselves, they kill somebody. That's -- it may not be. You
5 never know the future. You can't predict. But depending on
6 the background, if you get any of that, where if there's
7 that kind of a case and you are going for the death penalty
8 or whatever because he murdered someone, you have to
9 determine the odds are will it happen again. I mean, if he
10 did this by being attacked or some reason like that.

11 Q. Uh-huh.

12 A. Then you have to judge what are the odds he's
13 not like he did this, like robbing a place, killing someone,
14 or whatever. That's a whole different line. It just
15 depends on the case, what happened.

16 Q. To make it clear, when we talk about Special
17 Issue No. 1, it doesn't require that it be proved to you
18 that he's going to commit another murder or another capital
19 murder. It's just kind of whatever you -- do you think
20 there's a probability. Is it more likely than not that he
21 might commit criminal acts of violence, whatever that may
22 be, threats, assaults, all the way up to capital murder.

23 Does that kind of help a little bit when
24 you are looking at that?

25 A. To determine this case or what I've heard

1 about this case or anything?

2 Q. Just any case.

3 A. It just depends on the circumstance, the
4 person on trial, the circumstance of what happened, and
5 things like that.

6 Q. You realize -- I mean, if somebody acted in
7 self-defense --

8 A. Right.

9 Q. -- they wouldn't be guilty of anything. We
10 wouldn't even be at this point.

11 A. Uh-huh.

12 Q. Okay. But do you think if you found somebody
13 guilty of capital murder, that you could answer that Special
14 Issue No. 1 yes just because you found him guilty of capital
15 murder?

16 A. Probably, if he's guilty. If it's that high
17 of a degree of punishment that would pretty, well, say
18 uh-huh.

19 Q. That's what a lot of people tell us.

20 A. Yeah.

21 Q. I'm sitting over here looking at a convicted
22 capital murderer and I'm almost always automatically going
23 to think there's a probability he would be a danger to
24 society.

25 A. Just in my opinion, what I know, is that's

1 like a top of the line in punishment and pretty bad crime,
2 if you go for that, yeah.

3 Q. That's what a lot of people tell us. What the
4 law is, is that, basically, that when you get to that point,
5 when you answer question No. 1, you can't have already
6 automatically made up your mind. And a lot of people tell
7 us I just can't do that, Mr. Wirsky. Again, it's common
8 sense.

9 A. Uh-huh.

10 Q. I think they're a capital murderer. I'm
11 always going to think they're a future danger. And that's
12 kind of what I hear you saying.

13 A. Yes.

14 Q. Okay. And it's kind of like what we're
15 talking about with accomplices. Even though the law would
16 kind of ask you to keep that open mind and not do anything
17 automatically, it sounds like your mind is already made up
18 at that point, that once you convict them of capital murder

19 --

20 A. Yeah. Well, if I think it's to the point
21 where I agreed to put him to death, yeah, then my mind is
22 pretty well -- we don't want him out here, you know, because
23 of what he had done because he would probably do it again.
24 Who knows?

25 Q. Let me just make sure I'm clear on this. You

1 know, these questions determine whether he gets the death
2 sentence.

3 A. Okay.

4 Q. That first phase of the trial is just whether
5 you convict him of capital murder and find him guilty. So
6 the answer to these questions is what determines the
7 punishment. I hate to keep beating a dead horse, okay? But
8 it sounds like if you convict someone of capital murder --

9 A. Uh-huh.

10 Q. -- just find him guilty, you are always going
11 to answer that Special Issue No. 1. You are always going to
12 feel they are a future danger; is that right?

13 A. Right.

14 Q. Okay. It sounds like it's something that is
15 pretty common sense with you?

16 A. Uh-huh.

17 Q. Looks like it's something that you feel pretty
18 strongly about?

19 A. Yes.

20 Q. Special Issue No. 2, we kind of already
21 touched on it. That is the situation where there are
22 accomplices, you know, where the actual triggerman -- where,
23 I'm sorry, where the person you are talking about is not the
24 actual triggerman. Again, from what you are telling me, I
25 hate to beat a dead horse, but, you know, you would -- just

1 wouldn't be able to consider the death sentence for somebody
2 that didn't actually pull the trigger?

3 A. No.

4 Q. Somebody like me in our example?

5 A. Not when you have more than one person. If
6 it's just strictly one person, then I would. I mean, you
7 know, because when you have more than one you can prove to
8 me that who shot the gun and actually killed the man, well,
9 he should be -- get it worse. I don't care if it's one step
10 down than the rest of them, even though what they were doing
11 was wrong and bad. You know, if they are stealing guns and
12 the intent is they are going to do something with them, you
13 know.

14 Q. So you have a situation, like we talked about,
15 Mr. Shook pulled the trigger, causes the death, you give him
16 the death penalty. You would not give me the death penalty.
17 You would give me maybe a life sentence?

18 A. Right.

19 Q. Something like that?

20 A. Uh-huh.

21 Q. And that's because I didn't pull the trigger?

22 A. Because you were there and it could be just as
23 easy as him, but you went there with a gun to rob a place.
24 Anything can happen. So you knew when you walked in with
25 the gun, they are not like, have a good day, here's my

1 money. Things can happen.

2 Q. What you are telling me, and a lot of people
3 tell us is, that's just where I draw the line?

4 A. Uh-huh.

5 Q. I would never be able to consider that death
6 sentence for an accomplice, more than one person acting in a
7 crime, who didn't pull the trigger and didn't actually cause
8 the death. Is that --

9 A. Right.

10 Q. -- what I hear you saying?

11 A. Right.

12 Q. Let's talk a little bit about Special Issue
13 No. 3. This is kind of a last stop in the process. We call
14 it the mitigation question. What this question does is just
15 ask you to look back at the crime, what you have learned
16 about the person on trial, and what kind of personal moral
17 blame do they bear for the crime and see if there's anything
18 mitigating. By mitigating we mean anything that lessens
19 their personal moral blameworthiness, you know, makes them
20 less to blame, I guess. And if there is something like
21 that, is it sufficient that his life ought to be spared,
22 okay, that he shouldn't get the death penalty?

23 A. Uh-huh.

24 Q. And this is the last stop in the process, the
25 last question. And I see you kind of looking at me. And we

1 talked to a lot of people and they tell us, some of them do,
2 if I find somebody guilty of capital murder --

3 A. Uh-huh.

4 Q. -- I think they are going to be a future
5 danger, if I think they pulled the trigger, or like in
6 Special Issue No. 2, there's just nothing I can think of
7 that would be mitigating. At that point I've already made
8 up my mind after the guilty verdict and the answers on the
9 Special Issues, he's going to get a death penalty at that
10 point. There's just nothing mitigating. What do you think
11 about that?

12 A. Well, if I understand you right, like
13 sometimes I hear about cases where even a woman kills her
14 husband, okay? Automatic -- you know, she said it was
15 self-defense. They automatically -- or they go to court and
16 automatically, I'm crazy, so they don't have to go to jail.
17 It's just going to depend on the circumstances. But in some
18 cases what you did, you know, say somebody says I was beat
19 as a child, so I did this, that's how come I'm a bad person.
20 No, if we're talking 50 years later, you know, that doesn't
21 count. It's not going to say if that's -- let him go,
22 huh-huh.

23 Q. A lot of people tell us that age or background
24 isn't --

25 A. It depends on the trial of the case or

1 whatever, depends on what it is. But, no, that's not going
2 to get it.

3 Q. Can you think of anything off the top of your
4 head that you might consider mitigating? Any sort of factor
5 or set of facts?

6 A. Not particularly.

7 Q. Okay. You think your mind would be open to it
8 if you heard something or, like I said, at that point is the
9 process just too far along?

10 A. No, it's not too far along. Nothing ever is
11 until the final -- until the final say. I mean, until the
12 thing goes down. That's not to say, but it just depends.

13 Q. Okay. Give me just a second.

14 MR. WIRSKYE: May we approach, Your
15 Honor?

16 (Bench conference)

17 THE COURT: Mr. Wirskye?

18 MR. WIRSKYE: Pass the juror.

19 THE COURT: Any questions?

20 MS. BUSBEE: No, sir.

21 THE COURT: Agree?

22 MR. SHOOK: Yes.

23 MS. BUSBEE: Yes.

24 THE COURT: Ms. Echols, we appreciate
25 your service and time today. The answers that you have

1 provided thus far, you are not qualified to sit on the jury.

2 We appreciate your fairness to come down and appreciate it.

3 Thank you very much.

4 [Prospective juror out]

5 [End of Volume]

1 STATE OF TEXAS *

2 COUNTY OF DALLAS *

3 I, NANCY BREWER, Official Court Reporter for the 283rd
4 Judicial District Court, do hereby certify that the above
5 and foregoing constitutes a true and correct transcription
6 of all portions of evidence and other proceedings requested
7 in writing by counsel for the parties to be included in this
8 volume of the Reporter's Record, in the above-styled and
9 numbered cause, all of which occurred in open court or in
10 chambers and were reported by me.

11 WITNESS MY OFFICIAL HAND on this the 4 day of

12 March, 2004.

13
14
15 Nancy Brewer
16 NANCY BREWER, CSR, NO. 5759
17 Expiration Date: 12-31-04
18 Official Reporter, 283rd JDC
19 Frank Crowley Crts. Bldg. LB33
20 133 No. Industrial Blvd.
21 Dallas, TX 75207
22 (214) 653-5863
23
24
25

74851

REPORTER'S RECORD

VOLUME 11 OF 61 VOLUMES

TRIAL COURT CAUSE NO. F01-00328-T

STATE OF TEXAS * IN THE DISTRICT COURT
VS. * DALLAS COUNTY, TEXAS
PATRICK HENRY MURPHY, JR. * 283RD DISTRICT COURT

INDIVIDUAL VOIR DIRE

FILED IN
COURT OF CRIMINAL APPEALS

MAR 9 2004

Troy C. Bennett, Jr. Clerk

On the 5th day of September, 2003, the following
proceedings came on to be heard in the above-entitled and
numbered cause before the Honorable Vickers L. Cunningham,
Sr., Judge Presiding, held in Dallas, Dallas County, Texas.

Proceedings reported by machine shorthand.

ORIGINAL

A P P E A R A N C E S

APPEARING FOR THE STATE

Mr. Toby Shook
SBOT NO. 18293250
And
Mr. Bill Wirskye
SBOT NO. 00788696
Assistant District Attorneys
133 No. Industrial Blvd.
Dallas, Texas 75207
Phone: 214/653-3600

APPEARING FOR THE DEFENDANT

Ms. Brook Busbee
Attorney at Law
SBOT: 03488000
703 McKinney Ave. Ste. 312
Dallas, TX 75202
214/754-9090

Mr. Juan Sanchez
Attorney at Law
SBOT: 00791599
5630 Yale Blvd.
Dallas, TX 75206
214/365-0700

PROSPECTIVE JUROR INDEX

<u>PROSPECTIVE JUROR</u>	<u>CRT.</u>	<u>STATE</u>	<u>DEFENSE</u>	<u>VOL.</u>
Keith Pelusi	4	5	21	11
Donna-Marie Sexton	22	23	45	11
Deborah Pruett	46	48	77	11
Frank Arena	82	83	104	11
Christine Stucker	107	108	134	11

P R O C E E D I N G S

THE COURT: Ready for Keith Pelusi.

[Prospective juror in]

THE COURT: Good morning, sir, how are you?

PROSPECTIVE JUROR: Good, sir, and yourself?

THE COURT: Please have a seat. Let me try to pronounce your name. Is it Keith Joseph Pelusi?

PROSPECTIVE JUROR: That's correct.

THE COURT: Sorry for the delay in getting started. We'll just get right into it. Have you had an opportunity to review the guide I provided for you?

PROSPECTIVE JUROR: I have.

THE COURT: A lot of law and you are not expected to understand all of it from top to bottom. That's what the lawyers are going to visit with you about. Just -- it's an outline to begin to have you think about the issues that we're dealing with here. If you don't understand the questions, say, you know, rephrase that, give me another example, to where you can understand what the law is talking about.

My job is to be sure at the end of the process, number one, you understand the law, and number two, can you follow the law? That's the big picture here.

1 Only question I have for you, sir, is the
2 trial shall begin on November 10th. Do you have any reason
3 why you cannot serve this Court for those two weeks?

4 PROSPECTIVE JUROR: No, sir.

5 THE COURT: Very well. Mr. Wirsky shall
6 inquire for the State.

7 MR. WIRSKYE: May it please the Court.

8 KEITH PELUSI,
9 having been duly sworn, was examined and testified as
10 follows:

11 DIRECT EXAMINATION

12 BY MR. WIRSKYE:

13 Q. Mr. Pelusi, how are you doing this morning?

14 A. Good, sir.

15 Q. My name is Bill Wirsky and I'm the Assistant
16 District Attorney that will be visiting with you for the
17 next few minutes. What I would like to do is talk about
18 some of the information in your questionnaire and that type
19 thing and, also, talk about your thoughts and feelings about
20 the death penalty, and maybe, finally, talk a little bit
21 about the law and some of the rules that apply in a death
22 penalty case.

23 Have you had a chance to think about
24 coming down here since you got the call back --

25 A. Yes.

1 Q. -- to come down for an individual interview?
2 What's been going through your head?

3 A. Probably the same things that go through every
4 potential juror's head. The disruption of work and life.
5 And this one is a little different case because if I'm
6 picked for the jury, I'm uneasy about the consequences of
7 the trial.

8 Q. Tell me what you mean by uneasy.

9 A. Well, we're talking about a man's life and
10 that's something that becomes quite personal when you are
11 part of the decisionmaking process.

12 Q. How do you think that might affect you?

13 A. I think I will pay very close attention to
14 everything that you say.

15 Q. Okay. You know, we talk -- you saw the people
16 that came down with your group in the morning. We had
17 another big group in the afternoon just like that and
18 everybody filled out questionnaires. And the lawyers get
19 together and we kind of agree on who we're going to talk to
20 individually. And we talk to quite a lot of people.

21 And one of the reasons we do it is we
22 understand that this isn't necessarily everyone's cup of tea
23 when it comes to serving on a death penalty case. May be a
24 good juror in a civil case or another type of criminal case,
25 but both sides recognize there are some very strong feelings

1 or emotions that could be involved when you talk about
2 serving on the jury where so much is at stake, where a man
3 could actually lose his life by the State.

4 So we don't want to force anybody or
5 pigeonhole anybody or try to put anybody over in the jury
6 box. We don't want to make anybody violate their conscience
7 or make anyone uncomfortable, that type thing. Just as you
8 sit there right now, do you think -- in your own mind, do
9 you think that you are the right type of juror for this
10 case?

11 A. I don't know how to answer whether I'm the
12 right type or not. I don't have the background for that. I
13 think I should probably ask if you could rephrase the
14 question to something perhaps that I could answer.

15 Q. Are you completely comfortable?

16 A. No, I'm not completely comfortable.

17 Q. And the reason for that would be?

18 A. We're talking about a man's life.

19 Q. Okay.

20 A. I don't think that I could ever be completely
21 comfortable with sentencing a man to death.

22 Q. Okay. Do you think that you feel so strongly
23 about it, I guess, as a moral matter or matter of conscience
24 that, I guess, if you are sitting in my shoes, the State or
25 the prosecution, that you are probably not the best juror

1 for this type of case?

2 A. If I were in your condition or in your
3 position, I -- and felt, obviously, that I had a case, then
4 I would press it to get the death penalty.

5 Q. Okay. Let me ask you how you feel about the
6 death penalty. You told us a little bit in the
7 questionnaire that, I guess, in some cases you are in favor
8 of it. And I know you haven't seen your questionnaire since
9 you filled it out, so it's a little bit unfair that I have
10 got it in front of me. But we asked if you were in favor of
11 the death penalty and you checked yes. And when asked to
12 explain, you said in extreme cases only.

13 And I was just curious what you mean by
14 extreme cases. Is there a particular set of facts that come
15 to mind or a case you may have heard about or read about or
16 seen on TV?

17 A. Um, you are correct. I have forgotten most of
18 my mental thoughts while I was writing that. There are
19 situations that I feel the death penalty is warranted. I'm
20 not sure that I can give you legal -- I know that I can't
21 give you legal cases that would illustrate that.

22 Q. Is there a particular set of facts that you
23 think about, you know, someone did that or someone did this,
24 then, that would probably be a candidate, at least, for the
25 death penalty? I'm not talking about specific cases, just

1 types or sets of facts.

2 A. I think that the definition that I read here
3 in the voir dire orientation guide would be cases where I
4 could feel that that was appropriate.

5 Q. Okay. And you probably learned from reading
6 that, that the only crime in Texas where the death penalty
7 is available is a type of murder case. Not all murder cases
8 are capital offenses or subject to the death penalty. We
9 reserve that sentencing option just for a subset or a narrow
10 group of particular type murder cases, which I'm sure is
11 what you are referring to, murder of a police officer,
12 fireman on duty, that type thing, a child under six, murder
13 in the course of another felony, say robbery, that type
14 thing.

15 Are you generally in agreement with that
16 law that, you know, in your mind that's a pretty good
17 definition, I guess, of the type cases you think where the
18 death penalty should be an option?

19 A. Yes.

20 Q. Okay. Is there anything on that list that
21 kind of struck you as a little out there or that you were
22 uncomfortable with or anything like that?

23 A. No.

24 Q. Let me ask you this. We talk to a lot of
25 people and, you know, we know people usually don't sit

1 around thinking about their thoughts on the death penalty.
2 We give you different facts or different examples and it's
3 probably something you haven't thought about and we
4 recognize that.

5 But let me run these past you. I think
6 oftentimes when you think about capital murder or somebody
7 on trial for capital murder, you think -- or a lot of people
8 think of just one person acting alone. One criminal going
9 in and holding up a 7-Eleven store, shooting and killing the
10 clerk, or maybe shooting and killing the police officer on
11 the way out. But oftentimes down here we deal with crimes
12 that are committed by more than one person, you know, a
13 group or gang of individuals get together and commit the
14 crime.

15 In Texas the law allows us, depending on
16 the facts and circumstances, to prosecute for the death
17 penalty not only the person that actually pulled the
18 trigger, the person that actually took the life and caused
19 the death, but under some circumstances we can actually seek
20 death on a nontriggerman, what some people call an
21 accomplice, the person that didn't cause the death.

22 And we talk to a lot of people that are
23 generally in favor of the death penalty, but they would
24 limit it just to the person that actually took a life. You
25 know, we've heard people say that to take a life through the

1 death penalty is only justified when that person has taken a
2 life, so they would reserve the death penalty just for this
3 group of people that actually pulled the trigger. And they
4 wouldn't have, if they were Governor for a day, the death
5 penalty available to the accomplices. Say, yeah, they need
6 to be punished, we could lock them up for life, but the
7 death penalty ought to be off the table for that group of
8 accomplices, the nontriggermen. What do you think about
9 that?

10 A. I think it would have to depend on the
11 situation. An accomplice who was not involved at the time
12 of the shooting would be different than an accomplice who
13 was.

14 Q. Maybe I'm not following you. Can you explain
15 that to me?

16 A. If there was an accomplice who was helping at
17 some other geographical location, I might view that as a
18 different situation than somebody who was there and present
19 and able to intervene.

20 Q. Let me run you through a hypothetical or a set
21 of facts and kind of get your thoughts on it. Say
22 Mr. Shook, the other prosecutor, and myself and a third
23 individual decide we're going to rob a bank and we agree
24 Mr. Shook is going to be the one that has the one gun. He's
25 going in and hold up the teller. I don't have a gun and I'm

1 going to go in and just collect the money while he's holding
2 everyone up. We have a third guy who is the driver, our
3 getaway car driver, and our lookout. His job is to get us
4 there and get us away. Or if he sees the police coming,
5 he's going to hit the horn and let us know.

6 And we go in there and do the bank
7 robbery. And for whatever reason, Mr. Shook shoots and
8 kills one of those bank tellers. Obviously, he's the
9 triggerman. He's committed capital murder. He could be
10 subject to the death penalty.

11 What do you think in that situation about
12 the death penalty for someone like me, had no intent anyone
13 get hurt, didn't have a weapon, just went in there to
14 collect the money? What do you think about that for me?

15 A. I think I would have to learn more about the
16 law to have an opinion about that.

17 Q. Okay. What about the guy, just off the top of
18 your head, the getaway car driver?

19 A. You've succeeded in creating questions in my
20 own mind about what I believe about these things.

21 Q. I'll tell you what the law is. If I actively
22 aid or encourage or direct or solicit someone to commit
23 capital murder, then I'm guilty as an accomplice. If I tell
24 Mr. Shook, go ahead and shoot that bank teller so we can get
25 away, I would be guilty of capital murder and be subject to

1 the death penalty.

2 And the law also says in the situation
3 that I gave you, if the three of us agreed or conspired or
4 entered into a conspiracy to commit a bank robbery, and even
5 though I may have not had an intent that anyone die or the
6 man, the getaway car driver, may not have had that intent,
7 if we should have anticipated that a life could be taken,
8 then we could still be charged with and face the death
9 penalty, charged with capital murder and face the death
10 penalty, even though we had no intent that someone die.
11 Does that help you out at all?

12 A. Yes.

13 Q. Okay. What do you think about that, knowing
14 the law and knowing the set of facts, what do you think
15 about that scenario?

16 A. I think we're bound by the law and so I would
17 have to do what the law directs us.

18 Q. Okay. And, I guess, going back to the point I
19 made earlier, we want -- both sides want people that can
20 follow the law, give a fair trial to both sides. But what
21 neither side wants is someone over there whose duty to
22 follow the law kind of conflicts with any sort of moral
23 belief or conscience or anything like that. We don't want
24 to put somebody in that difficult position.

25 And I want to make sure that that

1 wouldn't be an issue for you, now that you know a little bit
2 of what the law is. And I'll tell you, quite frankly, in
3 this particular case we are prosecuting Mr. Murphy as an
4 accomplice, a nontriggerman, not the person that pulled the
5 trigger. That's our theory. We don't want anybody, like I
6 said, we don't want to jam anybody up, put them in a hard
7 spot.

8 What do you think about that? Do you
9 think, knowing now what you know, do you think you are the
10 type person that could serve on this jury?

11 A. I believe that I am.

12 Q. Okay. So when it comes to looking at
13 somebody, an accomplice or a nontriggerman, you just have to
14 know the facts, I guess?

15 A. That's correct.

16 Q. Would it make any difference to you in our
17 scenario if I had a gun, a loaded gun? Would that make it
18 more clear for you one way or another, knowing the standard
19 is should have anticipated?

20 A. I'm not sure that it would make a difference
21 because the law doesn't state that that's an issue.

22 Q. What the law requires is that the jury look at
23 the facts of the crime and say, should the accomplice,
24 should the nontriggerman, should they have anticipated that
25 a life would be taken? And it allows you as a juror to look

1 at all the facts of the crime and come to that decision. If
2 you feel it's been proven to you beyond a reasonable doubt
3 that I should have anticipated a life would be taken or the
4 getaway car driver should have anticipated that a life would
5 be taken, then you would convict him of capital murder and
6 proceed to decide whether the death penalty was appropriate.

7 So knowing all that, are those the type
8 factors that you think are important, knowing if I had a gun
9 or -- and you talk about the geographical factor, too, I
10 guess.

11 A. I was thinking of an entirely different case.
12 I was thinking about the terrorists who have been supporting
13 active terrorists who actually do take lives, for example,
14 people who collect money to support them.

15 Q. Okay. Not necessarily the getaway car driver
16 outside the bank, but just somebody who helps, bankrolls,
17 from a distance, from afar, for the crime?

18 A. Yes.

19 Q. Okay. You have told us, I think, like just
20 about everybody we talk to, that you have at least heard
21 something about this case. You know what case you are down
22 here on?

23 A. Yes.

24 Q. Could you tell us what you remember hearing
25 about this case?

1 A. I did not actively follow it. I understand
2 that there was a breakout from the Texas Correctional
3 Institution. In the course of the breakout, they, the
4 escapees, robbed a sporting goods store and in the course of
5 their robbery, the police officer was killed.

6 Q. Okay. Do you remember any other details or
7 did you follow it after the event, after the crime?

8 A. I did not.

9 Q. Okay. Follow the capture or the arrest or
10 anything like that?

11 A. I did hear about the capture, but I -- I did
12 not follow it.

13 Q. Have you followed any of the other trials
14 related to this case?

15 A. I have not.

16 Q. Okay. Do you think that might affect you,
17 having that knowledge, if you were selected as a juror in
18 this case, knowing something about it already or generally?

19 A. I don't think so.

20 Q. A lot of times, unfortunately, our law, we
21 talk to people, I guess the law and lawyers are more
22 comfortable with yes or no answers. So I hope you don't
23 feel like I'm trying to pin you down, but I am. I'm not
24 trying to be rude about it, but when you say you don't think
25 so, do you think there is a possibility that it might?

1 A. I don't know how to do your job and so I don't
2 know if there's anything in my recollection of the news
3 articles that would affect what you are trying to
4 accomplish.

5 Q. Basically, you know, the law doesn't require
6 that in order to have twelve people on a jury, that we find
7 twelve people that have never heard anything about the case.
8 Obviously, in high profile cases like this, that would be
9 impossible. The law requires that a juror be able to make
10 their decision on a case about guilt or about the death
11 penalty just based on what they hear in the courtroom and
12 not based on something they may have heard in the media.
13 That can't really influence their decision to any extent.

14 Knowing that, do you think that you would
15 be able to do that or you still think there may be a
16 possibility that you could be influenced by what you heard?

17 A. I think I can do that.

18 Q. Okay. If you had to say yes or no, which one
19 would you choose?

20 A. I'm not sure if I can answer yes or no,
21 because the question has been changed too many times. Yes,
22 I think I can serve on the jury.

23 Q. Let me ask you this. I'll ask the question a
24 different way. If you were picked to serve on this jury,
25 would you base your verdict just and only on the facts and

1 evidence that you heard in the courtroom?

2 A. Yes, sir.

3 Q. Let me ask you, again, another question off
4 your questionnaire. Again, I know you don't have it in
5 front of you, but we ask you kind of your feelings in
6 general about the criminal justice system. And you said it
7 was absolutely crucial to society and sometimes wrong. I
8 was just wondering what was going through your mind about
9 the sometimes wrong, if there was a particular case or just
10 a view that you hold or an opinion or what was going on
11 there when you put down sometimes wrong?

12 A. Recently there have been some publicized cases
13 -- I can't quote you the specifics -- of people who have
14 been incarcerated for many years and with new scientific
15 testing, the system has found that they were not guilty of
16 the crimes they were in prison for.

17 Q. Okay. Cases in Texas, some other state, or do
18 you remember?

19 A. I don't remember if it was in Texas or another
20 state, but I remember reading and hearing about more than
21 one case.

22 Q. Okay. Kind of going back to what we were
23 talking about earlier, do you think that may weigh on your
24 conscience if you were selected to be a juror in a death
25 penalty case?

1 A. It would not weigh on my conscience. I would,
2 obviously, be very interested in the quality of the
3 information that was provided.

4 Q. Because it's such an extreme penalty, I guess,
5 you know, you have talked about you would listen very
6 carefully to the information we give you. Do you think that
7 you would kind of hold us to a higher burden than you would
8 in an ordinary criminal case, a nondeath penalty case? Do
9 you feel that should be appropriate or should be the law or
10 how do you feel about that?

11 A. I suppose that any criminal case or any case
12 at all should be held to the same high standard. But, yes,
13 I would have to say that because a man's life is at stake, I
14 would expect things to be done in a very perfect way.

15 Q. And we talk to people a lot and we hear that a
16 lot. Because there's more at stake, because the possibility
17 of an error, which there is, I guess, in any system that
18 humans are involved in, because of that possibility of
19 error, you know, I know the law is beyond a reasonable
20 doubt, but I'm just going to have to be convinced, you know,
21 beyond a shadow of a doubt to a certaintude or I would
22 expect a certain case where if the State is asking to take a
23 life, I would expect and demand of them kind of that perfect
24 case, something beyond beyond a reasonable doubt. Is that
25 what I hear you saying?

1 A. Again, I come back to the -- the answer to
2 your question is no.

3 Q. Okay. The law states that any criminal case,
4 even a death penalty, that the burden that we have is beyond
5 a reasonable doubt. Not beyond all doubt, not beyond a
6 shadow of a doubt. You can have a doubt and still convict
7 someone unless and except it's a reasonable doubt.

8 What, very frankly, we're scared of at
9 this table is, because the stakes are so high, because this
10 is a death penalty case, we get people that say they can
11 follow the law, they can hold us to that beyond a reasonable
12 doubt standard, but once they get over there, realizing the
13 import of the case and the seriousness, in reality they are
14 holding us to a little higher standard. Of course, under
15 the law, you know, the law doesn't envision that or
16 contemplate that.

17 So I want to be sure that if you make it
18 over on the jury that you wouldn't be holding us to an extra
19 high burden just because the stakes are so high in a death
20 penalty case. What do you think about that?

21 A. Again, the answer is no.

22 Q. Okay. You wouldn't hold us to a higher
23 burden?

24 A. Correct.

25 MR. WIRSKYE: May we approach, Your

1 Honor?

2 (Bench conference)

3 MR. WIRSKYE: That's all the questions I
4 have.

5 THE COURT: Ms. Busbee?

6 CROSS-EXAMINATION

7 BY MS. BUSBEE:

8 Q. Mr. Pelusi, my name is Brook Busbee and I'm
9 one of Mr. Murphy's two attorneys. You seem like an
10 intelligent man with an orderly mind which would be a good
11 thing in a juror. But I also hear that following the law in
12 this case would be -- you're almost making me feel like it
13 would be painful or is that just because I don't know you
14 and that's the way you discuss things?

15 A. I'm not sure I understand.

16 Q. Well, let me cut to the chase. We don't want
17 -- this is true, we don't want anybody on this jury on
18 either side that is troubled by this process. Believe it or
19 not, we have folks up here that wouldn't be. And I see by
20 your questionnaire that you would lose two weeks of work, if
21 you were selected on this jury.

22 So we've agreed that you don't have to go
23 through this process anymore. We're going to hope that you
24 come back on another jury case and get selected, because I
25 think that you are a fine juror. But we're not going to put

1 you on this case because of some of those concerns. Is that
2 fair enough?

3 A. Yes.

4 THE COURT: Thank you, Mr. Pelusi, you
5 are free to go.

6 [Prospective juror out]

7 THE COURT: Donna-Marie Sexton.

8 [Prospective juror in]

9 THE COURT: Good morning, Ms. Sexton, how
10 are you?

11 PROSPECTIVE JUROR: Fine.

12 THE COURT: A little nervous?

13 PROSPECTIVE JUROR: Yes.

14 THE COURT: This is about as informal as
15 we can get and I'm sorry for the wait, but have you had an
16 opportunity to read the guide I have provided for you?

17 PROSPECTIVE JUROR: Yes.

18 THE COURT: It's a lot of law to give
19 someone first thing in the morning. We don't expect you to
20 be able to give it back to us and understand every word of
21 it. That's the opportunity we have now for the lawyers to
22 discuss the law with you, go over some examples of how the
23 law works, and then ultimately my question to you is, do you
24 understand the law?

25 PROSPECTIVE JUROR: I believe so.

1 THE COURT: And then the second question
2 is, if you understand the law, can you follow it?

3 PROSPECTIVE JUROR: I believe so.

4 THE COURT: We'll find out in a little
5 while. I appreciate the positive outlook. But that's what
6 this opportunity is for, so the lawyers can discuss that.
7 Those are the ultimate questions that I have to ask
8 concerning whether someone is qualified or not to sit on
9 this jury.

10 The only question that I have for you at
11 this time is this trial shall begin on the 10th of November.
12 Do you have any problems serving this Court for those two
13 weeks?

14 PROSPECTIVE JUROR: No.

15 THE COURT: Any questions for me?

16 PROSPECTIVE JUROR: No.

17 THE COURT: Very good. Mr. Shook?

18 MR. SHOOK: May it please the Court?

19 DONNA-MARIE SEXTON,
20 having been duly sworn, was examined and testified as
21 follows:

22 DIRECT EXAMINATION

23 BY MR. SHOOK:

24 Q. Ms. Sexton, my name is Toby Shook. I'll be
25 asking questions on behalf of the State. We're just

1 interested in your honest opinions. You have been pretty
2 honest on your questionnaire, so I don't think we'll have a
3 problem there. You have been on a jury before; is that
4 right?

5 A. Yes, I have.

6 Q. Okay. You probably realize, then, this
7 procedure is a little bit different. Because it's a death
8 penalty case, we talk to each juror individually. I'll ask
9 you some questions, follow up some on some information that
10 was put in your questionnaire, and, obviously, we'll talk to
11 you about the death penalty, how you feel about that, and
12 the laws that apply to those types of cases. If you have
13 any questions at any time, just feel free to ask. Okay?

14 A. Okay.

15 Q. All right. Now, first of all we did ask you
16 to fill out this 18-page questionnaire, a lot of questions.
17 You were very honest with us. Then several months have
18 passed and you get called to come down here for this
19 individual selection process.

20 Has anything in your life changed?
21 Anything in your life, personal or professional situations,
22 or with your family changed that you think we might need to
23 know about? Anything changed at all?

24 A. No, sir.

25 Q. Okay. So everything that has been put in the

1 questionnaire is pretty much the same --

2 A. Yes.

3 Q. -- as it was back when you filled it out? All
4 right. Let me go over a little bit about your background.
5 You were on a jury a couple of years ago; is that right?

6 A. Yes.

7 Q. What type of case was that?

8 A. I've actually been on two juries. First one
9 was a civil case on a -- okay, asbestos case. I can't say
10 the word, but -- and it was initially started out with three
11 defendants. Two dropped out after the first day and the
12 fifth one settled -- the third one settled after five days.

13 Q. So you never reached a decision there?

14 A. No.

15 Q. What about the criminal case? What was that?

16 A. It was a drunk driving, alleged drunk driving
17 case. They -- we had to decide the guy was not guilty
18 because they didn't prove that he had had anything to drink.

19 Q. Okay.

20 A. And he didn't do anything on his behalf.

21 Q. On his --

22 A. He -- his side didn't say anything.

23 Q. Okay. So you didn't feel the State met their
24 burden of proof of him being -- drinking any alcohol?

25 A. Correct.

1 Q. Now, let me ask you this. Any unpleasant
2 experiences about that experience, either experience, as a
3 juror?

4 A. No.

5 Q. Now, let me go -- and we asked a lot of
6 background information, whether you have been involved or
7 known anyone involved in the criminal justice system and you
8 let us know about a situation with your son when he was --
9 was he a victim of an assault at school?

10 A. Both. He was -- well, he was on a school bus
11 and apparently he threw a drink out a window and a kid off
12 the bus got on the bus and punched him with a spiked band
13 around his hand. So the police were called and they were
14 told that they could countercharge him with assault because
15 he hit back. And then we took it to -- we were going to
16 take it to court and they never called us into the
17 courtroom.

18 Q. But you came down to the courthouse?

19 A. Yes, we did.

20 Q. Was your son ever arrested or charged?

21 A. He was charged with assault, but when we went
22 to go back for his case, the parents of the other child
23 didn't come back.

24 Q. So it was dismissed?

25 A. It was dismissed.

1 Q. And then also the other person, the child that
2 got on the bus that assaulted your son, he had been charged
3 at one point?

4 A. Yes.

5 Q. And that's why you came down to the
6 courthouse?

7 A. Yes. And we were waiting to be called. It
8 was both on the same day. We were waiting in the morning to
9 be called in as witnesses and apparently our -- the DA said
10 his witnesses weren't there, even though we told him we
11 were.

12 Q. So the case was dismissed?

13 A. Against the other kid. So the other kid never
14 came back against my son.

15 Q. So both cases wound up getting dismissed?

16 A. Yes.

17 Q. Was this over at the juvenile courthouse?

18 A. I guess it was. I don't --

19 Q. It wasn't this courthouse?

20 A. No, I don't think so.

21 Q. Okay. And do you remember who the prosecutor
22 was that you talked to?

23 A. No, I really don't. My husband did most of
24 the talking with that one.

25 Q. How did that make you feel, that experience?

1 A. I was a little upset since we had let them
2 know we were there. My husband had -- my husband went in
3 and let the prosecutor know and he said, basically, all the
4 kid is going to get is anger management and maybe some
5 probation and my husband said, fine.

6 There were so many cases that were
7 sitting there waiting to be -- and they said anyone who was
8 not the actual one being accused, go wait out in the
9 hallway. And I said, my husband was standing there at the
10 door, so the guy would know we didn't leave and he never
11 called us in. And he went up there and said he had no
12 witness.

13 Q. Were you upset that they dismissed the case
14 against this person?

15 A. Yes, because we felt that the parents of the
16 kid was not taking care of it because after the initial
17 accusing, she would drive her son around following the bus
18 and as they call it, flipping him off when they got off the
19 bus.

20 Q. So there was some activity that went on after
21 the incident?

22 A. Yes. So we felt that he -- even if it was
23 just probation or anger management it would have been --

24 Q. It would have done some good. Has there been
25 any situations between that person and your son since then

1 or was that --

2 A. No.

3 Q. How -- do you think that might affect you in
4 some way that, obviously, I guess, you are a little angry
5 with the prosecutor at that point in time that did that,
6 just kind of, I guess they were somewhat dishonest or at
7 least didn't seem to care in that particular case or did
8 something?

9 A. That was that one guy and it's not going to --

10 Q. How long ago was that?

11 A. My son's been out of school for about a year,
12 so about two years ago.

13 Q. Okay. Now, another area I want to get into
14 and, you know, we don't mean to get into your personal
15 business, but obviously, we can't help that in some
16 situations. You had -- I guess it was another son that was
17 involved with an incident at school and that had some
18 psychiatric counseling since then; is that right?

19 A. Yes.

20 Q. Is that situation going on right now?

21 A. Yeah. He's been diagnosed with ADHD and been
22 put on medication and things have turned around totally on
23 that one.

24 Q. Was that a pretty serious situation, the
25 incident that happened in the classroom?

1 A. Um, he -- basically, he says that he was doing
2 it to scare the other kids because they would not stop
3 picking on him. He had taken his line that had his ID tag
4 on it and I guess twisted it like he was choking himself.

5 Q. How long ago did that happen?

6 A. About a year ago.

7 Q. Is he still in the same school?

8 A. Yes.

9 Q. All right. But he's doing much better now?

10 A. Yes. Like I said, once he was on medication,
11 he stopped doing what the kids called playing space cadet
12 and spacing out and he turned things around a lot.

13 Q. Good. Let me talk to you a little bit about
14 the death penalty. You know from listening to the Judge
15 when you were brought down the first time, that this is a
16 capital murder case in which the State is seeking the death
17 penalty. In fact -- let me ask you this. You probably
18 followed some of this case. Most of the jurors have. There
19 was a brief explanation. We can't get into the facts, but
20 you know this case happened in the year 2000, Christmas Eve,
21 at the Oshman's?

22 A. Yes.

23 Q. And you said that you did see something on the
24 radio, TV, or newspaper.

25 A. It was pretty hard at the time not to.

1 Q. Right, saturated. What do you remember about
2 the story?

3 A. Um, that the guys escaped, they robbed the
4 Oshman's, and the police officer was killed and eventually
5 they did catch the guys. That's really about it. I really
6 am not a big one for following most news stories.

7 Q. You didn't follow any of the subsequent court
8 proceedings?

9 A. I know that the other ones were found guilty.

10 Q. We just ask each juror to be honest with us on
11 that subject. Do you feel that what you have read or saw on
12 the TV or radio, newspaper, or what you followed in the
13 other court proceedings, would that affect you in any way as
14 a juror in this case?

15 A. No, no, because I think I could just pay
16 attention to what's going on.

17 Q. Okay. Do you feel from what you know -- let
18 me get into another area. You told us just on the subject
19 of the death penalty that you believe in the death penalty
20 as a law; is that right?

21 A. Yeah. I was looking at my answer. I believe
22 since it is the law and I believe in it, if it's planned, if
23 they know what they are doing, there's a good chance they
24 are going to have to kill somebody or would kill somebody in
25 the process.

1 Q. Okay. So if it's a planned killing?

2 A. Or a possibility of.

3 Q. Or a planned possibility, then you feel it
4 could be a death penalty case?

5 A. Yes.

6 Q. Have you followed any cases in the news that
7 you thought were death penalty cases?

8 A. No. As I said, I really don't follow the
9 news. My husband likes to watch it, but I usually watch my
10 sit-coms.

11 Q. Okay. In Texas there's only certain types of
12 crimes which are eligible for the death penalty. And you
13 see in the packet what they are is an intentional murder
14 that can occur during the course of a felony, such as a
15 robbery or rape, kidnapping, murder of a police officer or
16 fireman on duty, murder of a child under the age of six,
17 murder of more than one victim. But these are the specific
18 types of cases that a person could receive the death penalty
19 in. You may have read that in the packet, also.

20 Anything about those types of crimes that
21 you feel is unfair about seeking the death penalty or would
22 you expand it or would you limit it, if it were up to you as
23 far as those types of crimes?

24 A. I don't think so.

25 Q. In Texas a capital murder case is divided into

1 two parts. There's the guilt/innocence stage in which we
2 must prove the defendant's guilt. If we fail to do that,
3 it's a not guilty. If we do meet that burden, we go into
4 the punishment stage in which you would then, at the close
5 of that evidence, get these Special Issues.

6 The Special Issues basically is this. We
7 have to prove the defendant would be a continuing danger to
8 society, we have to prove that he either intended the victim
9 to die or he anticipated a death would occur, and then the
10 last question is, is there sufficient mitigating evidence
11 that a life sentence should be imposed rather than the death
12 sentence?

13 But if the questions are answered yes,
14 yes, and no, the Judge would have no choice. He would
15 sentence the defendant to death. The jury doesn't write
16 life or death in, but he bases or does his sentencing based
17 on how you answer those questions. A yes, yes, and no,
18 equals a death sentence. Any other combination of answers
19 equals a life sentence. But those are the only two possible
20 outcomes once he's been found guilty. Is that clear to you?

21 A. Yes.

22 Q. Are you familiar with the method of execution
23 in Texas?

24 A. No.

25 Q. The method of execution is by lethal

1 injection. It used to be by the electric chair. Now it's
2 by lethal injection. The procedures are the same. If the
3 defendant is found guilty and these questions are answered
4 yes, yes, and no, he would be sentenced to death. He would
5 be placed on death row.

6 At some point in time the trial judge
7 would actually issue a date of execution. On that date he
8 would be moved from death row, actually a day before, placed
9 in a special prison unit in downtown Huntsville where all
10 executions by law take place.

11 On the date of his execution, he's going
12 to be given time with family, you know, with a minister. He
13 will be given a last meal, if he can eat it. But at 6:00
14 p.m. all executions take place. He would be taken to the
15 execution chamber. He would be placed on a gurney. He
16 would be secured there by leather straps. You may have seen
17 the photographs of that in the news. They show that a lot.

18 A. Yes.

19 Q. Documentaries and things like that. He would
20 be secured. There would be needles placed in his arm, tubes
21 which go to another room where the executioner is placed.
22 Witnesses come in for both sides, friends and relatives of
23 the victim, friends and relatives of the defendant.

24 He's then given an opportunity at that
25 point in time to make a last statement, which is often

1 played in the press. Sometimes they ask for forgiveness,
2 sometimes they are defiant, sometimes they say they are not
3 guilty, very emotional scene, obviously.

4 When that statement is over, the warden
5 will simply signal the executioner who will then inject
6 substances which stop his heart, collapse his lungs. All
7 these poisons take effect while he is conscious. And in
8 about ten seconds he will lose consciousness and he will be
9 dead very quickly after that.

10 It's a procedure that occurs the same in
11 each case and these facts are all reported in each case.
12 But in Texas you probably know, even though you don't follow
13 the news, you probably know that executions actually take
14 place. Are you aware of that?

15 A. Yes.

16 Q. Texas leads the nation in executions every
17 year. Except one or two, Texas has led the states in
18 executions. So we know in Texas that it's a punishment
19 that's not only given out by juries, but ultimately carried
20 out by the judicial system. Some states have it, but they
21 never actually impose it. People stay on death row and it
22 never occurs.

23 And I want to lay all my cards out on the
24 table, because to be perfectly frank, we here at this table
25 believe that we have the type and quantity of evidence to

1 convince the jury of the defendant's guilt and that these
2 questions should be answered in such a way that he would be
3 executed in the manner I described, no if's, and's, or but's
4 about that. And the defense takes the opposite view, which
5 is why we are talking to jurors and going through this
6 process.

7 But you told us in your questionnaire,
8 like several people have, that you are a little nervous in
9 making that decision in this type of case where someone's
10 life is at stake. And that's perfectly understandable. We
11 have people that are against the death penalty, obviously,
12 and can't serve on the jury. And we have people who are
13 adamant for it. We have people that are for it
14 philosophically, but when you start thinking about taking on
15 that type of responsibility, they are not comfortable with
16 that.

17 A. Yeah. I mean, I think, you know, if the
18 evidence was there, I could say yes. But it's a hard
19 thought. I mean, like if you ask me, I don't necessarily
20 want to be on this case, but if anybody does --

21 Q. I want you to -- and that's fine, if you feel
22 that way. But I also want to be very honest with the
23 jurors. As you sit here today and realize I could be placed
24 on a jury, knowing I will make a decision on this man that I
25 see living and breathing for two weeks, that he will be

1 lying dead on a gurney some day. We have people the last
2 two weeks that say, I believe in the death penalty, but I'm
3 not going to be able to make that type of decision. And we
4 say, thank you very much for coming down and we excuse them.
5 And we have other people that can.

6 There's no right or wrong answers. But
7 we don't want to put anyone here, because after they are in
8 the box, the jury box, there's nothing we can do about that.
9 But I notice that you, like several other jurors, have
10 talked about some hesitation in a couple of parts in your
11 questionnaire and I just want to make sure that you are on
12 board with that and comfortable with that.

13 Do you think you, if it came down to it,
14 could make that decision or is there going to be some
15 reservations there about taking that type of responsibility?

16 A. I know I would have to think real hard.

17 Q. See, the problem is, we can't preview the case
18 for you.

19 A. I know.

20 Q. And that's -- but I think you realize how
21 serious the situation is. You don't know what kind of jury
22 you are going to be on. You were on a DWI last time which
23 was a lot different, obviously.

24 A. Yes.

25 Q. It could be a civil case like you were on the

1 time before or pot luck gets you on a death penalty case.
2 But that's why we call several thousand people down.
3 Remember, that room was full, all on just this one case,
4 because a lot of people feel differently and a lot of people
5 don't feel comfortable with making that decision.

6 A. I understand and I think I could follow the
7 law and make the decision based on the way the law reads.

8 Q. But you have a little bit of hesitation there?

9 A. Yes.

10 Q. Okay. Let me go over another area and I want
11 you to be as perfectly honest with me as possible on this.
12 We talk about the death penalty. Capital murders, you
13 usually conjure up an example of the triggerman, the person
14 that causes the death. You follow me?

15 A. Yes.

16 Q. I walk into a 7-Eleven and I rob the 7-Eleven
17 and I shoot the clerk and murder them. That's, obviously, a
18 capital murder case. I could be tried for capital murder.
19 I could receive the death penalty because I'm the
20 triggerman.

21 Capital murder, like all crimes, though,
22 sometimes more than one person helps commit an offense.
23 Those are called parties or accomplices. And if you assist
24 and actively participate in the crime, you can be prosecuted
25 for that crime, even though someone else involved may have

1 more of an active role.

2 In a capital murder situation, you can
3 have maybe one triggerman, but you can have other people
4 helping commit the crime. And if they are actively
5 involved, the law says that according to the facts they may
6 be prosecuted for capital murder, also, and found guilty.
7 They may even receive the death penalty, an accomplice can,
8 under the law, technically, even though they are the
9 nontriggerman.

10 And some people have a problem with that
11 and they say this. They will tell us, I'm for the death
12 penalty as a law and I'm for the death penalty when the
13 person is actually the triggerman, murdering these people.
14 But I am not for the death penalty when it's someone that's
15 a nontriggerman, that's an accomplice that's just there
16 helping. I find him guilty of aggravated robbery offense
17 and give him life, 75 years, or something, but I don't think
18 it's right to kill those people. I would reserve the death
19 penalty, if it's up to me, for the actual triggerman, the
20 murderer. How do you feel about that?

21 A. It would be harder to give the death penalty
22 for the accomplice -- I believe that whatever the law, going
23 by what the law says, if the evidence is there, I could
24 follow it.

25 Q. Well, a lot of people say the law says a lot

1 of things. But people say, look, you can say that all you
2 want. But I'm looking for your personal feelings right now.

3 A. That would be harder. I would have to believe
4 that that accomplice was -- if the other guy hadn't done it,
5 that he might have been willing to do it.

6 Q. Do you think the State would ever be able to
7 prove that to you?

8 A. Yes.

9 Q. How would they be able to do that?

10 A. Um, if the person had the weapon. And I don't
11 know if he was in a position to use that weapon or prepared
12 to use that weapon.

13 Q. Uh-huh. How does it go back to -- you said on
14 the death penalty your personal belief in it, if it was
15 planned out or a good possibility something like that would
16 happen?

17 A. If you are planning a crime and you approach
18 it with a weapon, with the ability to use that weapon, you
19 know that if you are going to, you feel you need to use that
20 weapon, you will.

21 Q. Okay. And in a part of the questionnaire we
22 ask, made a statement that criminal laws treat criminal
23 defendants too harshly, and we asked you if you agree with
24 that or disagree with that or you are uncertain about that
25 statement, and you put uncertain on that.

1 And I always like to ask a followup
2 question. Do you recall what you were thinking in that
3 regard?

4 A. Just the case -- I really haven't followed a
5 lot of the cases and don't know what's been, you know,
6 handed down one way or the other.

7 Q. Okay. Look at Special Issue No. 1. And if
8 you would, just read that to yourself for a moment.

9 A. (Prospective juror complies.) Okay.

10 Q. That question is asking the jurors to make a
11 prediction in the future about whether a person would be
12 dangerous. Let me ask you just generally, do you think that
13 you could make that type of prediction?

14 A. Yes.

15 Q. What would be important to you in making that
16 decision?

17 A. Past history would be part of it, probably be
18 a big part of it.

19 Q. Past criminal history?

20 A. Yeah, past history and personal history, too.
21 You can be violent without having been a criminal, too.

22 Q. This question you don't get to unless you have
23 found the defendant guilty beyond a reasonable doubt of
24 capital murder, intentional killing during the course of a
25 felony, or intentionally killing a police officer or child

1 or whatever. You would have to have found him guilty beyond
2 a reasonable doubt.

3 If you found someone guilty of that type
4 of offense, would that be enough information for you to then
5 -- does that tell you enough that this person is, indeed, a
6 danger for a capital murder?

7 A. I don't know.

8 Q. Why is that?

9 A. Um, I guess part of it would be whether he was
10 the actual shooter or the accomplice, which one.

11 Q. You still would have some -- if it's an
12 accomplice, I take it, that might be a situation where you
13 don't think they're dangerous?

14 A. That's where past history would fall in there,
15 too.

16 Q. What would be important about that for an
17 accomplice?

18 A. I guess because somebody could be there and if
19 they weren't the actual one who actually did it, they didn't
20 -- I don't know. I don't know how -- really, I just don't
21 know how to word it.

22 Q. Okay. Let me follow up, then, with Special
23 Issue No. 2. Read that to yourself. That has to do with
24 the accomplice.

25 A. (Prospective juror complies.) Yes.

1 Q. You see where that says, obviously, if he
2 caused the death, it's easy enough to answer. But if he
3 didn't cause the death, but intended to kill the deceased or
4 another, but anticipated a human life would be taken, do you
5 think that the State could ever prove to you in a situation
6 that an individual anticipated that a human life would be
7 taken?

8 A. Yes.

9 Q. What would be important for you there?

10 A. Basically, that they were ready with a weapon,
11 that they -- that they were ready to, you know, take a life,
12 if necessary, did not, you know, leaving the area whenever
13 their partner was doing it or whatever.

14 Q. Now, the last question is the mitigation
15 question. It asks you to look at everything involved in the
16 case, all the background, prior history, good and bad, and
17 then decide whether you think a life sentence should be
18 imposed, rather than a death sentence. As you sit here
19 today, can you think of anything that might be mitigating?

20 A. Whether they know right from wrong.

21 Q. Okay. You talking about like some mental
22 defect or something like that?

23 A. Yes. If they understand the difference
24 between right and wrong, if they can't understand.

25 Q. If they can't understand the difference

1 between right and wrong, then we wouldn't be able to
2 prosecute them. That might be an insanity issue or a mental
3 retardation issue or something like that. But if it were
4 that severe where they didn't understand it, we would never
5 reach that particular issue. It's a good point, though, but
6 we would never get that far because to get to just the
7 guilt/innocence, we have to prove that they intentionally
8 caused the death and they do know right from wrong. Okay?

9 A. Right.

10 Q. Anything else other than that, then?

11 A. No.

12 Q. Okay. Well, that's not unusual. But I do
13 want to ask you your honest opinion on this. Now, you
14 wouldn't get to that question unless you had found the
15 defendant guilty of capital murder, found that he was a
16 continuing danger to society, and believed beyond a
17 reasonable doubt they anticipated that a human life would be
18 taken, and with all that, he does know right from wrong.

19 Some people say, you know, once I've made
20 all those decisions, this question really has no meaning to
21 me. I mean, that pretty much is the deal for me. That's
22 the type of person that needs to get death penalty and I'm
23 not open to the mitigation question. Other people are.

24 But we like to ask people just honestly
25 how they feel about it. If you have already made that

1 decision that beyond a reasonable doubt he's guilty of
2 capital murder, that he's a continuing danger to society,
3 and that he did anticipate a life would be taken, once you
4 reach that point, would that be a death penalty for you in
5 your mind?

6 A. I believe so.

7 Q. That question really, then, would be closed
8 off to you, because you have made all those other decisions?

9 A. Well, I would listen to what was said, but I
10 really don't know -- in my mind right now, I really don't
11 know what would -- anything that would be, but -- if you
12 answer 1 and 2 as you said, they're --

13 MR. SHOOK: Can we approach, Judge?

14 THE COURT: That's fine. You pass the
15 witness?

16 MR. SHOOK: Yes, I pass the witness.

17 THE COURT: Brief questions?

18 MS. BUSBEE: Yes.

19 CROSS-EXAMINATION

20 BY MS. BUSBEE:

21 Q. Ms. Sexton, thank you for coming down here.
22 And your answers are thoughtful. Obviously, you have given
23 it some thought since you filled out this questionnaire. I
24 think we're going to agree that because of your answers, we
25 won't use you today, but we would welcome you back as a

1 juror on another day. Are you all right with that?

2 A. Yes.

3 Q. And we all appreciate you coming down and your
4 frank answers.

5 THE COURT: Ms. Sexton, thank you, again.
6 The parties appreciate your service and it's pretty tough,
7 isn't it?

8 PROSPECTIVE JUROR: Yes.

9 THE COURT: It is. Once again, we
10 welcome you here and we appreciate your service to the
11 county. But the parties have agreed to excuse you.

12 PROSPECTIVE JUROR: Thank you.

13 THE COURT: You are free to go.

14 [Prospective juror out]

15 THE COURT: Debra Pruett.

16 [Prospective juror in]

17 THE COURT: Good morning, Ms. Pruett.

18 How are you?

19 PROSPECTIVE JUROR: I'm just fine, thank
20 you.

21 THE COURT: Welcome to the 283rd. Have
22 you had an opportunity to read your orientation guide I
23 provided for you?

24 PROSPECTIVE JUROR: I have.

25 THE COURT: It's a lot of law first thing

1 in the morning and we don't expect you to understand it all
2 at this time. That's what the lawyers will visit with you
3 about. They will give you examples and see if you can, you
4 know, be sure how all of it relates together. That's the
5 key here.

6 Still, the questions that I have, number
7 one is, do you understand the law?

8 PROSPECTIVE JUROR: I do.

9 THE COURT: And, number two -- this is at
10 the end of the program. At the end of the program, do you
11 understand the law? And the second one, can you follow the
12 law? That's the big picture here. When I was -- I'll give
13 you a little bit of insight.

14 When I was reading your questionnaire, I
15 saw that you work for Southwestern Bell?

16 PROSPECTIVE JUROR: SBC.

17 THE COURT: And your name is Debra
18 Pruett. Do you know the other Debra Pruett at SBC?

19 PROSPECTIVE JUROR: Do I ever. We talk
20 on a daily basis and exchanging e-mails and sending her
21 stuff that went to her and it was a mess. I was glad when
22 she retired.

23 THE COURT: I see Debra Pruett, SBC, and
24 I just immediately assumed it was Judge Pruitt's wife. And
25 I read further and the ages all lined up and I thought that

1 might be her and then I finally figured out that you
2 weren't.

3 PROSPECTIVE JUROR: She's I-T-T and I'm
4 E-T-T. She's the white Debra Pruitt and I'm the black Debra
5 Pruett. So for years that was a problem.

6 THE COURT: And I thought they wouldn't
7 talk to the Judge's wife. And now that we got that
8 straight, I appreciate you being here. If you have any
9 questions, just say I don't understand, please explain a
10 little bit more. This can be -- we don't want it to be an
11 intimidating process. It's the only way we can do it.

12 PROSPECTIVE JUROR: Okay.

13 THE COURT: So I know people get somewhat
14 nervous when they come in and try not to. Just honest
15 answers to the best questions we can figure out.

16 PROSPECTIVE JUROR: I will.

17 THE COURT: With that, Mr. Wirskye, would
18 you like to inquire?

19 MR. WIRSKYE: May it please the Court.

20 DEBRA PRUETT,
21 having been duly sworn, was examined and testified as
22 follows:

23 DIRECT EXAMINATION

24 BY MR. WIRSKYE:

25 Q. Ms. Pruett, how are you this morning?

1 A. Just fine.

2 Q. My name is Bill Wirskye. I'll be the
3 Assistant District Attorney that will be visiting with you
4 for the next few minutes. Again, try not to -- it feels
5 like you are on trial --

6 A. It does.

7 Q. -- because we put you on the witness stand.
8 But because this is a death penalty case, the law allows us
9 to talk to jurors individually and that's probably the best
10 way to do it, the way the courtroom is set up, is to put you
11 on the witness stand. So we know it's uncomfortable, but
12 bear with us.

13 We would like to talk to you about some
14 of the answers you gave in your questionnaire, maybe talk to
15 you a little bit about your thoughts and feelings on the
16 death penalty, and then maybe talk about some of the law.
17 It looks like you have already looked through the packet?

18 A. I have.

19 Q. It looks like you were kind enough to tell us
20 -- and, again, we talk to a lot of people and we understand
21 people have got things going on in their own lives,
22 professional and personal and sometimes this isn't a good
23 time maybe for them to be involved in something like this.

24 But I think you told us on page 11 you
25 had some projects in progress at work that might affect your

1 ability to concentrate, if you were called upon to serve in
2 this case, I guess having to do with SBC's labor contract;
3 is that right?

4 A. Exactly.

5 Q. Tell us a little bit about that. I know a
6 little bit about that. I don't read the business pages too
7 much, but tell us about that.

8 A. Of course, we are a union company and the
9 majority of our employees are union employees and they have
10 a contract renewal every three years. It will come up again
11 in April of '04, but there's a lot of preparation before
12 that time that in the event of a work stoppage, you know,
13 business has to continue.

14 So I'm very involved corporately on the
15 committee to do what we call the business continuity plan
16 and look at every aspect of what would have to be done in
17 the event that there's a strike in April, you know, who
18 would do what, reassigning all of the 50,000 management
19 employees, determining what skills they have. You know,
20 we've not climbed poles and installed phones in a long time,
21 but that's what would be involved if the nonmanagement folks
22 went on strike. So just a lot of preparation for that. You
23 know, what buildings would be open and closed, how you field
24 people, how many hours, all the logistics.

25 Q. Sounds like you have got a lot on your plate

1 between now and April of next year, then.

2 A. And, hopefully, it won't even happen.

3 Q. Always, I guess, prepare for the worst and
4 expect the best?

5 A. Exactly.

6 Q. What do you think about taking two weeks or
7 so, which is our best guess for the length of this trial in
8 November, away from your job? And I see you smiling.

9 A. I don't think anybody in their right mind
10 wants to be on this jury. I mean, you know, if that's what
11 it takes, that's what it takes. It would be difficult, but
12 doable.

13 Q. We understand to a large extent it's a
14 hardship for everybody.

15 A. Exactly. I realize that.

16 Q. There are people that are in the middle of
17 things that even though it may not be necessarily a legal
18 reason not to serve, sometimes lawyers could get together
19 and work around that. But do you really need to be down
20 here on a death penalty case for two weeks in November based
21 on your work?

22 A. No, I mean, I don't.

23 Q. Take it kind of one step further, you
24 mentioned in your questionnaire it might affect your ability
25 to concentrate. You know, I think I'm on page 11 at the

1 top. I know you haven't looked at this since you filled it
2 out.

3 A. I think it's just human nature. You think
4 about what's going on in the office and what I didn't get
5 done before I took the two weeks off and, you know, just the
6 natural everyday things that come with working.

7 THE COURT: Ms. Pruett, let me try to
8 alleviate some of your apprehension. The guide stated we
9 will be able to take a break in the morning. You would have
10 a lunch hour. You can use the phones. You won't be locked
11 up, sequestered, at night. We work real predictable,
12 regular business days, as I said.

13 PROSPECTIVE JUROR: Very good. And
14 that's helpful.

15 THE COURT: We're not going to shut you
16 down.

17 PROSPECTIVE JUROR: Okay.

18 THE COURT: And we anticipate it could be
19 two weeks.

20 PROSPECTIVE JUROR: Okay.

21 Q. (By Mr. Wirskye) I guess, talking about
22 things, worrying about work or other things that you have
23 got going on, what both sides want to avoid, I guess, is
24 somebody that is lost in thought on the jury and maybe miss
25 something for either side, because it wouldn't be fair to

1 either side if we couldn't have a juror that could devote
2 100 percent of their attention to what is going on in the
3 court. How do you think that might affect you?

4 A. I think a day or so, it's hard to say without
5 actually doing it. Do I think that if I'm called to serve,
6 that I could give it my undivided attention? I would surely
7 hope I could. That would be my intent to do so.

8 Q. A lot of times down here we always kind of try
9 to ask people to give yes or no answers. If I had to ask
10 you a yes or no answer on that, do you think that you could
11 completely put that out of your mind, what you have got
12 going on at work, and just concentrate on what is going on
13 in the court, do you think that you can do that?

14 A. Yes.

15 Q. Okay. Fair enough. You know, you kind of
16 already mentioned, I guess, this is not the type of case,
17 not because of work, but just not the type of case that a
18 lot of people want to serve on. We certainly understand,
19 both sides. We know there's strong feelings one way or the
20 other about the death penalty or about the system in which
21 we work. And we're not here to kind of force people in the
22 jury box. We just want to know how you actually feel about
23 some of these issues.

24 What's been going through your mind since
25 you got called back for the individual interview?

1 A. I could not believe out of all the people in
2 that room that I got called back. I think the thing that
3 probably goes through my mind the most is that other people
4 involved in this case have already been tried and convicted.
5 And, you know, even outside someone was saying, it's a slam
6 dunk. It's automatic. It's hard to see this one person
7 differently from his other partners in the crime.

8 Q. Quite frankly, at this point in the process
9 there's a big fear, certainly, for the defense and Mr.
10 Murphy, but also for us. It sounds like you followed some
11 of the other trials and the results of those trials?

12 A. I did.

13 Q. In fact, it sounds like you talked to somebody
14 right outside the court?

15 A. I just overheard somebody talking. I didn't
16 get involved in the conversation.

17 THE COURT: You heard that here in this
18 courtroom?

19 PROSPECTIVE JUROR: No, it was in the
20 hall.

21 THE COURT: In the hall?

22 PROSPECTIVE JUROR: Uh-huh.

23 THE COURT: Could you tell whether they
24 were wearing a suit or --

25 PROSPECTIVE JUROR: I was in the room, so

1 I could just hear the voices. I was in the little waiting
2 room and someone just walked up outside and said, what is
3 this trial for? And someone replied. And he says, "They
4 have already done the other five or six and so this is just
5 a waste." It's just conversation that I heard in the room.

6 THE COURT: Sheriff, would you please
7 investigate that outside now and see who that was? We will
8 shut that down.

9 PROSPECTIVE JUROR: I didn't mean to get
10 anybody in trouble.

11 THE COURT: No, ma'am, I need to know
12 this, because it's not fair to Mr. Murphy to have other
13 people injecting their opinions down here, unless they want
14 to come down and serve. And if I find out who that is, I
15 will deal with it.

16 PROSPECTIVE JUROR: I just think it was a
17 passerby, but I didn't see him.

18 Q. (By Mr. Wirskye) It wasn't any of the lawyers
19 at the table that you are looking at?

20 A. I don't know who it was. I was in the little
21 waiting room and it was just in a conversation outside.

22 Q. I don't want a deputy coming after me.

23 A. Sounds just like your voice (laughter).

24 Q. Thanks.

25 THE COURT: Pass the witness?

1 PROSPECTIVE JUROR: That's good enough to
2 strike me.

3 Q. (By Mr. Wirskye) In all seriousness, though,
4 that is one of the problems that we face because so much has
5 been in the press and everybody we talked to has heard
6 something, differing amounts. Some people just kind of
7 caught it back when it happened on the news. Some people
8 read about it, seen stuff on TV, and some people actually,
9 such as yourself, are actually aware of the other verdicts
10 in the other cases.

11 A. Exactly.

12 Q. You know, we kind of ask people to do
13 something very unnatural down here and kind of put that out
14 of your head, you know, as a juror. We know it's sometimes
15 -- it's not human nature, necessarily, to tell somebody not
16 to think about a pink elephant. They are going to think
17 about the pink elephant.

18 How do you think that's going to affect
19 you, if you are selected to serve as a juror on this case,
20 knowing what you know about the case and the other trials?

21 A. I do really believe that a person has to be
22 considered innocent until proven guilty, so, you know, there
23 are always different circumstances. I don't know one party
24 from the other. Could have been something very different
25 about this particular defendant. So, I mean, I definitely

1 have an open mind from that perspective.

2 Do I feel like they were all in it
3 together? I mean, I have read the newspapers, I have seen
4 the television coverage, but I also know everything you hear
5 and read is not necessarily true. So you have to keep an
6 open mind.

7 Q. Okay. And what the law basically says, you
8 know, even though you may have heard these things, that
9 basically you have to put them out of your mind to the
10 extent possible and just base your verdict in this case on
11 what you hear in the courtroom. Do you think that you would
12 be able to do that?

13 A. I will certainly try.

14 Q. Okay. Again, we get to that yes or no. Do
15 you think that you could just base your verdict on what you
16 hear in the courtroom?

17 A. Yes.

18 Q. Okay. Fair enough. Let me also ask you some
19 questions. On page 2, I know you have your questionnaire in
20 front of you, we asked you the best argument against the
21 death penalty. Just to back up for a second, I think that
22 you are generally in favor of the death penalty for some
23 crimes; is that right?

24 A. That's correct.

25 Q. You said the best argument against the death

1 penalty is nothing could bring the victim back; therefore,
2 why give the murderer a swift death when instead he or she
3 could suffer more doing a long prison term.

4 I'm just curious, you know, we hear this
5 quite a bit. Do you think in your mind it's a worse
6 punishment to lock someone up for life or a long prison
7 sentence as opposed to the death penalty? Where do you kind
8 of come down on that?

9 A. I think each case has to be looked at, you
10 know, individually. I don't know that you can just say a
11 yes or no, best to do the long-term versus the death. I
12 just think each case has its own merits. But I do think
13 there are times when death does fit the crime and I think
14 there are other times when a prison sentence would probably
15 be better suited and to spare a life.

16 Q. Is it a situation where you think for some
17 people that that long prison sentence could actually be a
18 worse punishment?

19 A. I think it could be in some cases.

20 Q. So kind of depending on the case or depending
21 on the person, I guess, depends on what you think the
22 harsher penalty is --

23 A. That's correct.

24 Q. -- the life or death penalty? Okay. We also
25 asked, do you think the death penalty is ever misused? If

1 you want to follow along, I'm on page 4, about the middle of
2 the page. You said, jurors are humans, capable of allowing
3 prejudice or bias to impact their decision. Then the next
4 few questions down, do you feel the death penalty in Texas
5 is used too often or too seldom? And you said, too often
6 due to the bias and prejudice of Texas jurors.

7 I just kind of want you to follow up on
8 that. We hear comments like that quite frequently and we
9 kind of like, you know, to know who we're talking to and
10 what your thoughts are. If you can follow up on that, I
11 would appreciate it.

12 A. Here, again, a lot of what we know as citizens
13 about death penalty cases come from television or newspaper.
14 And I always take all of that with a grain of salt, because
15 it's only as factual as the person writing or reporting.
16 But I just think there's no doubt that the majority of folks
17 on death row, most times, are poor, minority folks. And I
18 think that depending on where they were tried and who the
19 jury was, that bias and prejudice does come into play.

20 Q. Having lived here for a while, do you have
21 that concern with what goes on in Dallas County or Tarrant
22 County? I know you are in Grand Prairie.

23 A. I have lived in Grand Prairie, Dallas County,
24 all my life. Sometimes.

25 Q. Is there a specific case that you can think of

1 or something that troubles you or something you heard about
2 and know about that troubles you with what's going on here
3 in Dallas?

4 A. I probably can't think of a specific case
5 quickly, but I know there have been times in my adult life
6 when I felt like a minority defendant didn't stand a chance,
7 even before they walked in the courthouse. And I don't know
8 if this is an ingrained thing because I'm a minority or
9 what, but it's just a very sincere feeling that I felt.

10 Q. Sure. How do you think that might affect you
11 as a potential juror?

12 A. I think it makes me more sensitive to it. I
13 mean, I think it's really important. If you have to be in a
14 position to be on a jury, which I don't want to be, but if
15 so, I mean, I think it's very important that everybody --
16 that you listen to the facts and that you not take into
17 account on a negative basis whether a person is black,
18 white, Hispanic, that, you know, justice should be equal for
19 everybody.

20 Q. Do you think it would make you more or less
21 likely to maybe assess a death penalty maybe because of the
22 defendant's race?

23 A. No, because I would like to think that that's
24 exactly what I wouldn't do, because that's what I don't like
25 to see done.

1 Q. Okay.

2 A. I think that should not be a factor, just the
3 facts that are presented, and then the defense that's
4 presented.

5 Q. Do you think based on some of your opinions
6 that you are skeptical of the District Attorney's Office or
7 law enforcement or -- I guess, how would you characterize
8 about how you feel, I guess, about my office?

9 A. Probably not any more than anyone else that I
10 would know. But, I mean, I don't have a conspiracy theory
11 in my head that, you know, when you walk in the door, it's a
12 slam dunk, if you are a minority, you are going to be found
13 guilty or anything like that. But it probably wouldn't be
14 true to say there's not some skepticism at some time.

15 Q. Okay. If you were in my shoes, if you were a
16 prosecutor, would you want you on the jury?

17 A. Probably. I mean, if you want somebody that
18 was fair.

19 Q. You know, what both sides look for is people
20 -- as long as people are honest, we can deal with whatever
21 they say. We just, you know, don't want people with hidden
22 agendas.

23 A. If you have a strong case, you probably want
24 me on the jury. If you don't have a strong case, you
25 probably don't want me on the jury.

1 Q. The reason I ask that is you talked about both
2 prosecutors and defense lawyers. We kind of asked you what
3 is the first thing that comes to mind, and you wrote flawed.

4 A. I read my answer to that. I don't know what I
5 was thinking. That was a long survey that day and that was
6 getting near the end, I think.

7 Q. Since I'm a prosecutor, let me start with
8 prosecutors. What was going through your mind on that?

9 A. I think I was thinking in terms of lawyers,
10 period. And that is, you know, no matter what the crime is
11 or how bad the crime is, there is going to be somebody for
12 that person, and there's going to be somebody against that
13 person and somebody has got to be wrong, you know, someone
14 saying they are either innocent or should be given this
15 consideration. And then your job is to tell me why they
16 shouldn't. And something is flawed on one of the two sides
17 every time. That's just kind of what I was thinking when I
18 wrote that.

19 Q. You don't think that's anything that would
20 affect your ability to, I guess, serve as a juror for either
21 side, the defense lawyer or the prosecutor? I guess what I
22 mean by that is, you know, both sides want this case just
23 decided on what happens in the courtroom. And, again, we
24 don't want people with an agenda. You know, I know
25 prosecutors are crooked and this prosecutor is not doing his

1 job or the defense lawyer doesn't seem like they are doing
2 their job or done their homework or anything like that.

3 Do you think that might be going through
4 your head at all?

5 A. I don't think so.

6 Q. Okay. We also asked you right below that, you
7 know, we gave you some statements and then gave you some
8 choices on whether you agreed, disagreed, or uncertain. And
9 you said most criminals are actually victims of society's
10 problems and you marked uncertain.

11 I was wondering what was going through
12 your mind, if you remember, when you filled that out?

13 A. I think it was the word "most" that probably
14 made me go uncertain. I surely think that society's
15 problems and environment are sometimes the cause of the
16 problems. But I don't know that I could answer that based
17 on the fact that you asked about most criminals.

18 Q. Okay. To kind of follow up on that, you said
19 some crimes, society's problems, I guess, I think you said
20 the cause. What do you mean exactly by that?

21 A. Ask that again, please.

22 Q. You had said you agree with it to some extent
23 that some criminals actually are victims of society's
24 problems. How do you see that working?

25 A. You know, I guess I think about someone who

1 has maybe -- maybe been raised in a violent home, severely
2 abused and mistreated. It's pretty difficult in my opinion
3 for you to be raised in that environment during your
4 formative years and not have an impact on the type of human
5 being that you become as an adult. So sometimes I think
6 environment really does stack the deck against certain
7 people.

8 Q. Is there some point in your mind where kind of
9 regardless of your background or your upbringing that a
10 person just has to be held accountable?

11 A. Oh, most definitely. I mean, it could be that
12 that was the result of environment, doesn't mean that you
13 still aren't held responsible for your actions.

14 Q. Also, the statement right below that, it says
15 the criminal justice system fairly protects the rights of
16 persons accused of committing a crime and you marked
17 uncertain. I was just curious what was going through your
18 mind with that.

19 A. Again, I was thinking about some of the biases
20 and prejudices that I think exist in some courtrooms.

21 Q. Okay. You also, I guess, just kind of going
22 in order on the next page, page 6. You have had some people
23 that, I guess, some relation to you that have had contact
24 with the criminal justice system, it looks like?

25 A. Members of my husband's family.

1 Q. Is there anybody on that list that you were
2 particularly close to or that you had an interest in the
3 case or knew about or came down to court or --

4 A. Didn't come down to court on any of the three,
5 but all three were family members that I was close to over
6 the years.

7 Q. Were those all out of Dallas County?

8 A. Yes -- well, possibly Tarrant County for
9 Dennis Day, but Dallas County mainly.

10 Q. Okay. How do you think they were treated by
11 the criminal justice system? We kind of talked about the
12 flaws and maybe some bias and prejudice. Do you think any
13 of that applied in those cases?

14 A. They were probably treated fairly.

15 Q. You thought they were guilty with what they
16 were charged with?

17 A. Yes.

18 Q. The particular punishments they received, did
19 you feel that was appropriate?

20 A. Yeah, probably. I think as a family member
21 you always like to see there be some leniency, but in
22 reality, probably fairly.

23 Q. Nothing that you thought was beyond or just
24 too excessive?

25 A. No.

1 Q. Move on to the next page, page 7, at the top.
2 You had told us that you had a brother-in-law murdered in
3 1977 and a nephew murdered in the late 1990s?

4 A. That's correct.

5 Q. What do you remember about the
6 brother-in-law's murder?

7 A. It hasn't been solved. That's probably the
8 thing that stands out the most.

9 Q. Was that in Dallas?

10 A. That was actually in Tarrant County.
11 Probably, I guess it's just probably a crime of passion. He
12 was found dead in his bed and my husband discovered the
13 body, so that one was a little closer to home. And he was
14 not a criminal element, a very outstanding citizen. So that
15 was more of a shock than probably any of the other things
16 that I have cited on the form.

17 Q. Is it a situation where you think you might
18 know who did it?

19 A. Exactly. There was no forced entry, no.

20 Q. Do you have someone in mind, I guess?

21 A. Who I think? Yeah, I do.

22 Q. Have the police followed up on that or do you
23 think --

24 A. Not really.

25 Q. -- do you think --

1 A. This has been years and no one has ever been
2 arrested in the case, so.

3 Q. Fair to say you think they haven't given it
4 their full attention or full effort?

5 A. I just think it was never a priority.

6 Q. Okay. And then the nephew that you had, were
7 you close to him?

8 A. Yeah. Had not been in later years because of
9 the lifestyle he lived, you know, but knew him from a child,
10 a baby, through his formative years, very close to him.

11 Q. Was that in Dallas?

12 A. Arlington, Tarrant County.

13 Q. Was that ever solved?

14 A. Yes.

15 Q. Okay. They got the person that did it, I
16 guess?

17 A. (Prospective juror nods head.)

18 Q. Was there a court proceeding that followed
19 that?

20 A. There was and he was found guilty and given a
21 fairly light sentence, but --

22 Q. Do you remember what the sentence was?

23 A. I want to say less than ten years.

24 Q. Was it for the charge of murder?

25 A. Yes.

1 Q. Okay. Did you have any contact with the
2 District Attorney's Office? I guess it would have been
3 Tarrant County?

4 A. No, didn't attend the trial or anything.

5 Q. Fair to say you are a little dissatisfied with
6 that? Was it a trial or a plea bargain?

7 A. I think it was a plea bargain. You know, the
8 type of lifestyle that the nephew was leading, it was not
9 surprising. And so, you know, I didn't really get involved
10 in the trial or get very emotionally involved in what even
11 happened to the defendant in the case.

12 Q. Okay. You also told us that you had friends
13 and acquaintances who are police officers?

14 A. Mainly acquaintances, uh-huh.

15 Q. No one real close friend?

16 A. No. Not anybody that I socialize with on a
17 daily or weekly basis, but church members, coworkers,
18 spouses, that kind of thing.

19 Q. The fact that your life has been touched by
20 the violence that you have told us about, or the fact that
21 you know police officers, I mean, obviously, this is a
22 murder case where we have alleged a police officer has been
23 killed, do you think that may have any effect on you, either
24 of those factors?

25 A. I don't.

1 Q. Okay. Let me talk to you a little bit more
2 about the death penalty. You told us, I guess, that you are
3 in favor of it, I guess, philosophically --

4 A. In some cases.

5 Q. Is it something that when you get down here
6 and it actually becomes very real and you see the person
7 charged and see him in the courtroom, does that give you any
8 hesitation maybe of actually participating in the process?

9 A. It makes it harder.

10 Q. Quite frankly, we talk to a lot of people who
11 tell us philosophically in the abstract, I'm in of favor it,
12 I think that we should have it, and I think it should be
13 enforced. But I'm just not personally comfortable in
14 participating in the process.

15 A. There's definitely a level of discomfort.

16 Q. And we certainly don't want to put anyone that
17 has any discomfort like that, we don't want to jam anybody
18 up against their conscience, their morals, their beliefs.
19 And we know it's quite a different thing to actually come
20 down here and participate in the process.

21 Do you think you are the type person that
22 maybe could do that, actually go through the process, and,
23 you know, render a verdict such that, you know, a man you
24 see in court today or you may see for two weeks during the
25 trial, that he would actually be executed and one day lie

1 dead on a gurney in Huntsville, Texas? In your heart of
2 hearts do you think that you are the type person that could
3 actually participate in that process?

4 A. If the facts present themselves, I mean, I
5 could. But, you know, it would depend on the case that was
6 presented.

7 Q. Okay. Let me touch another aspect with you
8 briefly. Again, we talk to a lot of people. And as you can
9 imagine, murder cases aren't always committed by just one
10 person, groups and gangs of people.

11 And you are somewhat familiar with some
12 of the allegations in this case. The law allows under
13 certain circumstances not only the State can prosecute the
14 triggerman, the person that actually caused the death or did
15 the murder, for the death penalty, but the law also allows
16 in some instances the State to prosecute a nontriggerman or
17 an accomplice, the person who didn't pull the trigger, who
18 didn't actually cause the death. Depending on the facts and
19 circumstances, that person could be convicted of capital
20 murder and even receive the death penalty.

21 And a lot of people we talked to say, I'm
22 in favor of the death penalty, strongly in favor of it,
23 even, for the triggerman, you know, the person that actually
24 took the life, pulled the trigger, made the decision. Some
25 people tell us it's religious or moral, they only feel you

1 are justified in taking a life of a person who has taken a
2 life.

3 But they tell us, very frankly, that when
4 it comes to somebody who didn't actually cause the death or
5 even somebody that didn't have intent that a death would
6 happen, that the death penalty just shouldn't be an option.
7 If they were Governor for a day or legislator for a day,
8 they would just take it off the table and it wouldn't be an
9 option. What do you think about that?

10 A. I don't have a problem with that being an
11 option. I understand that's the law. I think, again, it
12 just depends on the facts that have been presented as to
13 whether I think it would actually warrant the death penalty,
14 if the person wasn't the triggerperson.

15 But I definitely understand the law and
16 it's an option. Sometimes you don't have to be the
17 triggerperson. You could be the person yelling, pull the
18 trigger. I mean, it just depends on the circumstances of
19 the case.

20 Q. So you wouldn't automatically take the death
21 penalty off the table for the accomplice?

22 A. Not automatically.

23 Q. Let me give you a fact situation, run you
24 through it, and see what you think. Say the other
25 prosecutor, Mr. Shook, and I decide we want to rob a bank.

1 And I've known Mr. Shook for a while and he's been to prison
2 before. He's not a very nice guy. We get to plan together
3 and we have got one gun. He's going to take the gun into
4 the bank and hold up the teller. I'm not going to have a
5 gun. I'm just going to come in and put the bank's money in
6 the bag, make a getaway. And we have a third friend who's
7 going to be the getaway car driver. He's going to drive us
8 up there and sit outside. If the police come, he may honk
9 the horn, that type thing.

10 I don't have any intent that somebody is
11 going to get hurt. I just kind of signed up for a bank
12 robbery. We go to do the bank robbery and for some reason,
13 unknown to maybe everybody, Mr. Shook pulls the trigger and
14 shoots and kills a teller. He's, obviously, committed
15 capital murder. He's the triggerman. He can receive the
16 death penalty. But under that scenario I could,
17 potentially, receive the death penalty as well.

18 What do you think about a person in my
19 position in that scenario?

20 A. You put yourself in that position. I would
21 have to hear more of the facts. I would have to hear more
22 of the details of the situation. Options would have to be
23 kept open, because you were a participant in the activity,
24 you knew a gun was there, and so the potential was there,
25 whether you thought it would be or not.

1 Q. What do you think about the person out in the
2 car, the getaway car driver?

3 A. Same thing.

4 Q. And that's basically what the law is. Even
5 though somebody in my circumstance or that driver's
6 circumstance didn't have intent that a life would be taken,
7 if we should have anticipated, okay, if we should have
8 anticipated that a life would be taken, then we could be
9 convicted of capital murder and ultimately face the death
10 penalty. Does that make sense?

11 A. It does.

12 Q. Are you in general agreement with that? And
13 I'll be frank with you. We are prosecuting this case,
14 prosecuting Mr. Murphy as an accomplice, a nontriggerman.
15 That's why we spend time talking about this and, you know,
16 we certainly don't want somebody over there that has a
17 philosophical disagreement with that law or can't sit in a
18 case of this nature. But it sounds like it's something that
19 you could do?

20 A. Yes, I could.

21 Q. Okay. If you will take a few minutes just to
22 look, I know you have read them. They are phrased a little
23 differently here, the Special Issues on the wall. Actually,
24 the answers to those questions determine what the
25 appropriate sentence is. If you could take just a few

1 minutes and read those to yourself, so we can talk about
2 them.

3 A. (Prospective juror complies.)

4 Q. We don't ask jurors in death penalty cases
5 just to write in life or death for a decision. We ask them
6 to answer these three questions and, depending on the
7 answers to those questions, that determines what the
8 sentence will be.

9 The first Special Issue talks about
10 whether there's -- whether the person would be a future
11 danger, kind of asks the jury to make a prediction based on
12 what they know about the crime, what they may have heard in
13 the punishment phase, whether they feel that the person may
14 be a future danger. That question starts off with a no
15 answer and can only be answered by the jury yes, if, you
16 know, we, the State of Texas or the DAs, prove it to you
17 beyond a reasonable doubt that the answer should be yes.

18 Special Issue No. 2 is exactly the same.
19 It starts off with a no answer, and only if we prove it to
20 you beyond a reasonable doubt, do you answer yes. And this
21 question kind of deals with what we've been visiting about,
22 the accomplice.

23 Actually, what happens, you know, we
24 talked about it, if you find the person should have
25 anticipated, an accomplice should have anticipated that a

1 life would be taken, you can find them guilty of capital
2 murder. Before the death penalty is assessed, if you look
3 at the last line on Special Issue No. 2, the law kind of
4 raises the hurdle or raises the burden and says, before you
5 can assess the death penalty, the jury must find not only
6 that they should have anticipated, but they actually
7 anticipated. Does that make sense?

8 A. It does.

9 Q. It's kind of a fine distinction, but it's a
10 little bit higher burden. Again, it's kind of a set of
11 filters, I guess, we run through to make sure that the
12 people that actually get the death penalty, I guess, are
13 truly deserving, is the way some people feel about it.

14 If both of those are answered yes, we
15 move on to Special Issue No. 3. This is kind of a last stop
16 in the process. We just kind of ask jurors to step back,
17 take a deep breath, you know, look at everything that you
18 have heard about the case, about him, his background, what
19 sort of moral blame he bears for what happened, and ask
20 yourself is there anything mitigating? Is there anything
21 that lessens his blame? And if there is, is it sufficient
22 that his life should be spared and that he shouldn't get the
23 death penalty?

24 It's kind of the final check in the
25 system, I guess, is one way to look at it. Does that scheme

1 kind of make sense to you that we have?

2 A. It does.

3 Q. Okay. Do you have any questions about it?

4 A. No.

5 Q. The only thing I'll point out on Special Issue
6 No. 3, neither side has the burden in that. That's just up
7 to the jury to answer.

8 A. Okay.

9 Q. The jury doesn't even have to agree on what's
10 mitigating. The law doesn't necessarily require that you
11 consider any particular fact mitigating. A quick example,
12 some people may say, if he's very young, that could be
13 mitigating, 19, 20. Other people feel if you are that old,
14 that's not mitigating. You are old enough to know right
15 from wrong. And jurors can disagree. But the law doesn't
16 require that you necessarily consider any particular factor
17 mitigating. Does that make sense?

18 A. It does.

19 Q. Okay. Is there anything that just off the top
20 of your head strikes you as something that might be
21 mitigating in a death penalty case?

22 A. In general or in this case?

23 Q. Well, we can't talk about this case. I know
24 you know a lot about it, but we can't talk about this case.

25 A. As you mentioned, age is a factor,

1 self-defense type deal. What the -- a lot of things that
2 could be mitigating, just depends on the situation.

3 Q. Let me stop you right there, just so you are
4 clear. If you kill someone in self-defense, you have not
5 committed a crime in Texas. We have a right to defend
6 ourselves. So if this was something that was done in
7 self-defense, we wouldn't even be here. So just to clear
8 that up. I think I know what you are trying to say.

9 A. Yeah.

10 Q. So everybody is clear. But you think age may
11 be mitigating?

12 A. In certain circumstances, yeah.

13 Q. Give me just a second.

14 MR. WIRSKYE: May we approach?

15 (Bench conference)

16 THE COURT: Any further questions,
17 Mr. Wirskye?

18 MR. WIRSKYE: No. Pass the witness.
19 Thank you, Ms. Pruett.

20 CROSS-EXAMINATION

21 BY MS. BUSBEE:

22 Q. Just like the Judge, I know the other Debra
23 Pruitt and I was going, great, because I knew her. And you
24 are just as nice.

25 I heard some when we were first talking

1 about this and I noticed on your questionnaire that there's
2 something going to happen next year that you're working on
3 right now and you told the Judge that this contract comes up
4 every three years. Do you have to go through this every
5 three years?

6 A. The company does, yes.

7 Q. Is this the first time you have done it?

8 A. This is the first time that I've been in the
9 current role that I'm in, in the time of the contract
10 renewal. Been involved in work stoppages before, but not
11 the planning phase.

12 Q. You keep getting stopped when you are talking
13 about the fact that you know about this case. But, see, I
14 read you as somebody who is kind of no nonsense and you
15 can't put what you know out of your mind. Some people say
16 that they can and sometimes we believe them. But I think
17 that you probably are a person who has to take all the facts
18 -- and human resources, I'm guessing you came up having to
19 deal with employment issues and that sort of thing, so you,
20 obviously, have to look at all the facts on a situation like
21 that.

22 Do you think, just based on what you
23 heard and what you maybe heard in conversations today, that
24 you may have already formed an opinion about some of the
25 facts of this case?

1 A. I'm sure to a certain extent, of course, I
2 have. I mean, you know, this was a pretty widely publicized
3 case. So, you know, from what I've read about it and I've
4 heard about it, so, you know.

5 Q. Sure. I would expect you to.

6 A. Yeah.

7 Q. You would be amazed to see how many people act
8 like they don't even remember this case and maybe they
9 don't. Maybe they don't watch TV or read the papers, but it
10 certainly surprised me. And that's all I wanted to know.
11 And I appreciate you coming down to talk to us today.

12 A. Okay.

13 THE COURT: Ms. Pruett, we want to thank
14 you for your time and very wonderful answers, being honest.
15 The parties have agreed to excuse you, number one, because
16 you know a lot about the case, and I'm troubled about what
17 you heard out in the hall, and I'm going to get to the
18 bottom of that, trust me. Number one, it's not right. As I
19 said, we're happy with your opinions. And I will give you a
20 juror instruction that you can't talk about this to anyone.
21 And we have someone poison the juror before you come in the
22 door, that's not fair to you because they may or may not
23 know anything about this case, you see.

24 And so, given where we are and all that
25 you knew, the parties have agreed to excuse you. Can't wait

1 to have you back for another case.

2 PROSPECTIVE JUROR: There was -- there
3 was also another guy in the room with me that also heard the
4 conversation.

5 THE COURT: Was that the bicycle guy?

6 PROSPECTIVE JUROR: The bicycle guy, yes.

7 THE COURT: He didn't share that with us.

8 PROSPECTIVE JUROR: He was reading a book
9 and I was trying to read the stuff and that's probably why
10 it distracted me a little bit more.

11 THE COURT: Thank you.

12 PROSPECTIVE JUROR: Thank you.

13 [Prospective juror out]

14 (Recess)

15 THE COURT: We're on the record.

16 Gentlemen, I know it was no fault of yours, the last juror
17 came in was very honest and shared with us that an
18 individual passing by, passing through, had some business
19 with the DA's Office, juror, witness, defendant, who knows.
20 And evidently the door to the waiting room for these jurors
21 is open. And she testified that she heard someone say --
22 didn't see who it was -- that to the effect of, well, I
23 don't know why they are trying this case. It's a slam dunk.
24 We can have it read back. But it was a comment by an
25 unrelated party that was made and two jurors heard it.

1 So I don't know how to tell you to do
2 your job, other than if you hear that, snatch whoever it is
3 up and maybe come in here and I will deal with it. So you
4 just have to be on guard for that because you know people
5 are going to make comments.

6 UNNAMED SHERIFF DEPUTY: Yes, sir.

7 THE COURT: But, basically, that blew my
8 morning.

9 UNNAMED SHERIFF DEPUTY: I understand.
10 We have already made one change out here, Judge, where we're
11 having people meet in the DA's Office come in through the
12 other door to keep them from coming through this way.

13 UNNAMED SHERIFF DEPUTY: Keep this door
14 locked.

15 THE COURT: Keep it closed and locked.

16 MS. BUSBEE: As long as anybody that is
17 admitted in the anteroom is informed that they can't have
18 any discussions about anything in the anteroom, then that
19 would be fine with me.

20 THE COURT: Well, it's just we don't
21 anticipate somebody is going to be that stupid, but there
22 again, we're in a criminal courthouse, we should.

23 MS. BUSBEE: Absolutely.

24 THE COURT: But, Sheriff, yeah, if you
25 can reduce the traffic to this area as best you can and keep

1 these jurors isolated as best we can, I appreciate that.

2 UNNAMED SHERIFF DEPUTY: Yes.

3 THE COURT: So we have Mr. Arena this
4 afternoon. Anything else to put on the record?

5 MS. BUSBEE: No.

6 THE COURT: We have two this afternoon.

7 (Recess)

8 THE COURT: Mr. Arena.

9 [Prospective juror in]

10 THE COURT: Right up here, sir. Thank
11 you. You may be seated. Good afternoon, Mr. Arena, how are
12 you?

13 PROSPECTIVE JUROR: Fine. How about
14 yourself?

15 THE COURT: It's Friday afternoon. That
16 says it all right there. We appreciate you being here and I
17 see you have got the orientation guide in front of you. Did
18 you have enough time to review that before you came in?

19 PROSPECTIVE JUROR: Uh-huh.

20 THE COURT: I've tried to provide you as
21 much information as I can in a short period of time. I
22 don't expect you to know all the law, but we give it to you
23 to start thinking about it, how it all interrelates. The
24 lawyers are going to visit with you, try to explain the law
25 in some more detail, give you examples, so you can

1 understand how it works.

2 And my job is to be sure, number one,
3 that you understand the law. The second question is if you
4 understand the law, can you follow the law? That's my job
5 here.

6 Only question I have for you before we
7 begin is will you be able to serve this Court for two weeks
8 beginning on November 10th?

9 PROSPECTIVE JUROR: Yes.

10 THE COURT: I'll turn it over to
11 Mr. Wirskye.

12 MR. WIRSKYE: May it please the Court.

13 FRANK ARENA,
14 having been duly sworn, was examined and testified as
15 follows:

16 DIRECT EXAMINATION

17 BY MR. WIRSKYE:

18 Q. Mr. Arena, how are you this afternoon?

19 A. Okay.

20 Q. My name is Bill Wirskye and I'll be the
21 Assistant District Attorney that is going to visit with you
22 for the next few minutes. What I would like to do is maybe
23 talk about some of the information that you were kind enough
24 to give us on the questionnaire that you filled out. And I
25 think we've got you a copy of it up in front of you. I know

1 it's been a while since you thought of it.

2 Also, talk to you a little bit about how
3 you feel and what you think about the death penalty and
4 maybe being a juror in a death penalty case, and then,
5 finally, maybe talk about some of the laws or rules that
6 apply in a death penalty-type case.

7 Do you have any questions before we get
8 started?

9 A. No.

10 Q. I frequently ask bad questions or confusing
11 questions, so if you don't understand something, just let me
12 know and I'll try to repeat it or if you have any questions,
13 let me know.

14 Normally in a nondeath penalty case we
15 talk to jurors as a big group. Since this is a death
16 penalty case, it allows us to talk to you one on one.
17 Pretty much the best way we've found to do it is to put you
18 on the witness stand. I know it's not very natural or not
19 very comfortable, but hopefully you will become more at ease
20 as we get a little further into this.

21 What went through your mind when you
22 found out you were going to be called back for the
23 individual interview?

24 A. Well, I don't really know. I was thinking you
25 would be calling in about five or six hundred people, so I

1 don't know what the numbers are, but I figured it was a
2 standard routine.

3 Q. The group you came down with in the morning,
4 the large group of people?

5 A. Uh-huh.

6 Q. We had another group in the afternoon. Had
7 everybody fill out questionnaires. And the lawyers kind of
8 get together and we decide who we're going to talk to
9 individually. It usually takes a couple of months to get a
10 jury, talking to five or six people a day, gives you some
11 idea of the numbers.

12 What do you think about being a juror in
13 a death penalty case?

14 A. It doesn't bother me. I mean, I don't really
15 know what you mean by asking that question. If you mean can
16 you do it or you can't do it or --

17 Q. We can talk about that in a second. A lot of
18 people, especially when they fill out the questionnaire,
19 it's not very real to them at that point and people who may
20 be otherwise very strongly in favor of the death penalty,
21 when they actually get down to this point in the process,
22 they are kind of thinking, it's not my cup of tea. I'm not
23 really sure I'm cut out to do this.

24 And I want to make sure that wasn't what
25 you were going through or going through your mind?

1 A. Oh, nothing especially. I don't think it
2 bothered me any more than a robbery case or anything else.
3 I mean, I have never served on a jury before.

4 Q. You also told us, I think on the very back
5 page -- it's in front of you. We asked, is there anything
6 else that you think the Judge or the lawyers from either
7 side ought to know and you said you don't get paid if you
8 are on jury duty; is that right?

9 A. That is correct.

10 Q. How big a hardship -- jury service is always a
11 hardship to everybody. We know that.

12 A. I understand that.

13 Q. How big a hardship is it going to be for you
14 if you lose that two weeks of work?

15 A. I've got two weeks vacation coming.

16 Q. You would have to take your vacation for it?

17 A. Yeah. I mean, you do what you have to do. I
18 mean --

19 Q. Okay. I guess the bottom line is we don't --
20 we don't want jurors who have something going on in their
21 professional life or personal life or at work that, you
22 know, if they came down here to serve as a juror for a
23 couple of weeks, would be thinking about something else
24 other than the case, what's going on, making enough money,
25 feeding the family, that type of thing.

1 Do you think that would be a problem for
2 you at all?

3 A. Well, it says in this booklet that it's
4 expected to last about two weeks. It really shouldn't, if
5 that's the case. I mean, it's going to be a problem if it
6 drags out, yeah.

7 Q. But if you were a juror, do you think that you
8 can base your decision just on what you hear in the
9 courtroom and you wouldn't be worrying about something else
10 and maybe miss something in the court or anything like that?

11 A. No.

12 Q. Okay. Fair enough. You have told us that you
13 are generally in favor of the death penalty; is that right?

14 A. I don't -- what page? I thought I was kind of
15 like I felt the crime needs to fit the punishment.

16 Q. I guess it's on page 1 at the very start. We
17 asked if you were in favor of the death penalty. Looks like
18 you checked yes.

19 A. Yeah, I mean --

20 Q. I'm not asking for the death penalty in every
21 case.

22 A. Yeah. It doesn't bother me. The fact I feel
23 an eye for an eye or whatever, you know, the punishment fits
24 the crime.

25 Q. Okay. You, I guess, feel we should have it as

1 an option in certain cases; is that right?

2 A. I don't necessarily think an option. I mean,
3 if the law states if the death penalty is implied for such
4 and such crime, I guess.

5 Q. Uh-huh. How we have it, to kind of give you
6 an overview, only certain types of crimes in Texas are
7 subject to the death penalty, only certain types of murder
8 cases, basically. Kill a police officer on duty, fireman,
9 prison guard, child under six, you commit an intentional
10 murder in the course of another felony, like robbery,
11 burglary, then those type crimes are eligible for the death
12 penalty.

13 And if a person is convicted of capital
14 murder, it's not automatic just because they are convicted
15 of capital murder. We go into that second phase of the
16 trial where we would ask the jury to answer those three
17 questions that you read about and are up on the wall. And
18 depending on how the jury answers those questions, that
19 would determine whether it would be a life sentence or,
20 actually, the death penalty would be imposed.

21 Is that something you kind of generally
22 agree with?

23 A. Yeah.

24 Q. Okay. Any particular type cases that come to
25 mind when you think about an appropriate type case for the

1 death penalty? Any particular facts or anything like that?

2 A. What type of case? You mean, like murder or,
3 well, I mean, if someone is a threat to society, if you
4 murder somebody coldblooded and it was premeditated, I mean,
5 yeah.

6 Q. Okay. So planning, things like that --

7 A. Yeah.

8 Q. -- would be important to you? Okay. Let me
9 ask you to look at your questionnaire on -- I think it's on
10 page 3. We asked you some questions about publicity and
11 everything else. You, like everybody else we talked to, has
12 at least heard something about this case.

13 A. Yes.

14 Q. It's almost impossible in a case like this to
15 get people who haven't heard anything about it. What do you
16 remember hearing about this case?

17 A. That a police officer got killed in Irving at
18 the Oshman's, which I only live a few miles away from, which
19 is real close to home and a store that I've been into a lot
20 with my daughter. And, you know, I was kind of shocked
21 because, like anything else, it happened so close to home.

22 Q. It happened in a place you are familiar with?

23 A. Yeah. I've been in there several times.

24 Q. For lack of a better term, I guess, your back
25 yard?

1 A. Yeah.

2 Q. How do you think that might affect you, living
3 that close, having heard what you heard, how do you think
4 that might affect you if you were selected as a juror in
5 this case?

6 A. I don't know if it would affect me at all. I
7 don't really see the difference if it happens in my back
8 yard or the other side of Dallas.

9 Q. Okay. Have you followed any of the other
10 court proceedings or trials on these type cases?

11 A. No. I remember one of them, hearing about it
12 on the news, I mean, that I think he got the death penalty.
13 And I haven't heard that much about it anymore because I
14 don't watch the news that much anymore. I just --

15 Q. Okay. All the law requires, basically, is
16 that you are able as a juror to just base your decision on
17 what you hear in the courtroom, again, kind of like the same
18 thing, work problems. As long as you can do that and not
19 let anything you have heard or any personal knowledge you
20 may have of the area of the crime scene affect your verdict,
21 you would be a qualified juror. Sounds like you wouldn't
22 have any problem doing that?

23 A. Correct.

24 Q. Let me ask you to go up to the top of page 3.
25 We asked a couple of questions and they are kind of

1 confusing the way they are worded, and I want to make sure I
2 understand what your answer is. That No. 2 at the very top,
3 jury's verdict should be based only on the evidence heard in
4 the courtroom and not from what one hears outside the
5 courtroom. And there's a checkmark there by disagree and I
6 didn't know what your answer was to that.

7 A. Well, yeah, the case should be based on the
8 evidence heard in the courtroom. But, you know, if, the way
9 the news is and everything, if you hear something outside,
10 it's kind of hard to, I guess, to disclaim that.

11 Q. Yeah. It's kind of -- if you have heard
12 something, it's kind of hard, even if --

13 A. You know, for example, I watched a deal on the
14 History Channel on the Darlie Routier, the FBI, and all the
15 investigations and it's like that pinpoint investigation,
16 you know, that I don't want to tell you my verdict on that,
17 but it's kind of hard to hear something like that and just
18 disclaim it.

19 Q. Okay. I will ask you, what is your verdict on
20 the Darlie Routier case?

21 A. Guilty.

22 Q. Okay. So you think you would be able to put
23 that stuff aside that you heard and go ahead and base your
24 verdict on what you hear in the courtroom?

25 A. Yeah. I think that everyone is entitled to a

1 fair trial.

2 Q. Okay. And the question right below it, No. 3,
3 kind of what we've been talking about, what one hears in the
4 news media is a better source of information than testimony
5 one hears in the courtroom. And, again, it's kind of
6 confusing the way it's worded. But you checked that you
7 agreed with that. I didn't know if that was really how you
8 felt.

9 A. Which question is this?

10 Q. No. 3 at the top of the page.

11 A. Okay. What one hears -- that, again, too, I
12 wasn't really just saying in the news media. I guess it
13 would be replying to the previous case we just talked about.
14 I mean, you -- let's face it, you get better information off
15 a football game at home watching TV than going down to the
16 stadium.

17 Q. Okay. Feeling that way, how do you think that
18 might affect you as a juror?

19 A. I don't think it would affect me.

20 Q. Are you going to be worrying about second
21 guessing your verdict or thinking about something you heard,
22 wondering why either side hasn't presented that or gotten
23 into it?

24 A. No. I mean, I understand, too, that there are
25 laws and certain things in a trial are brought in and

1 certain things are left out.

2 Q. Okay.

3 A. And I also understand there are also plea
4 bargains to where if you leave this out, this person will
5 leave this out, because I've been there before on that
6 during divorce, I mean, you know.

7 Q. Okay. The bargaining-type scenario?

8 A. Yeah.

9 Q. Okay. You also told us, I think your son has
10 a pending case, looks like maybe a misdemeanor?

11 A. Yeah, he's taken care of it. He graduated
12 high school and was 18 years old and went to the high school
13 to see some of his friends and got a ticket and it turned
14 into a warrant. And he didn't do the community service and
15 it just got worse and worse and worse. But he's doing the
16 community service now and I think it's going to go away.

17 Q. Sounds like he learned his lesson maybe?

18 A. Doing what he is supposed to do.

19 Q. Do you think your son was treated fairly
20 during all of that?

21 A. Yeah, I think so -- I think, I mean, my
22 ex-wife would probably disagree with it because he lives
23 with her. But, yeah, I don't feel these younger generation
24 of these kids, they don't teach in school all the aspects of
25 the law and breaking the laws and the penalties and all that

1 and I think it, you know, it was a lesson.

2 Q. Okay. Getting back to the death penalty for a
3 second, we kind of ask you if you want to follow along, it's
4 on page 4. If you believe in using the death penalty, how
5 strongly do you feel about it on a scale of 1 to 10, with 1
6 being the least and 10 being the most, and you gave yourself
7 a 10 on that; is that right?

8 A. It's like I said, I mean, you know, murder,
9 you know, I don't -- you know, I'm not -- I guess it would
10 be a weak or faint person. I mean, the word "death
11 penalty," that doesn't scare me, I mean.

12 Q. So in the appropriate case, I guess you would
13 feel pretty strongly --

14 A. Yeah.

15 Q. -- it should be imposed? Let's talk about
16 that. I know everybody comes down here kind of with their
17 own beliefs and their own, I guess, preconceptions of what
18 they consider, I guess, a good candidate for a death penalty
19 case. And we talk to a lot of people. A lot of people come
20 in who are philosophically for the death penalty. They can
21 do it. But they start drawing some lines as to who would
22 get the death penalty and who wouldn't.

23 And here's what I mean by that. I think
24 usually when you think of the death penalty or capital
25 murder, you think of the guy maybe going into the 7-Eleven

1 and shooting the clerk, taking the money, and running off.
2 You think it's just that one guy, the triggerman, when you
3 think of the death penalty.

4 But oftentimes, as you probably know,
5 crimes are committed by more than one person. A group or
6 gang of people can commit crimes. In Texas the law allows
7 under certain circumstances to prosecute the nontriggerman
8 or the accomplice, what some people call them, the person
9 who didn't actually cause the death. They could be
10 prosecuted for capital murder.

11 A. I read something on that one.

12 Q. Do what?

13 A. I read something about that, yes, when I was
14 here, yes, about this case.

15 Q. And, obviously, you know, a lot of people who
16 feel very strongly about the death penalty, just feel it
17 should be reserved for those people that actually pull the
18 trigger, the people who actually cause the death of the
19 individual. You know, they would kind of take the death
20 penalty off the table or wouldn't want it as an option for
21 an accomplice or a nontriggerman. Mainly, a lot of people
22 tell us the accomplice or the nontriggerman didn't actually
23 cause the death. You know, they may give them a life
24 sentence or something really stiff, but they wouldn't
25 necessarily or they wouldn't want the death penalty

1 available for that nontriggerman or the accomplice. What do
2 you think about that?

3 A. Well, I guess you did kind of bring up a gray
4 area. You do have the 7-Eleven triggerman, but on the other
5 hand, too; the person that is an accomplice to that, I
6 guess, it's a way to reduce crime in a way to set an example
7 to where just because I drove the getaway car, I walk away,
8 I mean, that's not right, either.

9 Q. So you wouldn't necessarily take away the
10 death penalty as an option for even the getaway car driver?

11 A. I don't know. I would have to hear the case.
12 I mean --

13 Q. Let me give you an example. I know people
14 don't sit around thinking about this and we hit you with a
15 lot of stuff. Say Mr. Shook and myself and another friend
16 of ours decide we're going to rob the bank. The plan is for
17 Mr. Shook to take our one gun in and hold up the teller. I
18 don't have a gun. I'm going to go in with the bag. I'm
19 going to collect the money while he holds them up. We have
20 a third friend who has a car that drives us up there. He's
21 going to wait outside the bank. If the cops come, he may
22 honk the horn and let us know.

23 But we go to do the bank robbery. And
24 for some reason Mr. Shook decides to shoot and kill the
25 teller. He's committed the capital murder. Obviously, he

1 intended that. He can face the death penalty. The law
2 would also allow under certain circumstances for me, the
3 nontriggerman, and the guy out in the getaway car driver, to
4 be prosecuted and maybe receive the death penalty, even
5 though we may not have even had any intent that somebody get
6 killed.

7 What do you think in that situation under
8 those facts? What do you think about the death penalty for
9 someone like me?

10 A. Well, I guess the crime would have to fit the
11 punishment. Like I had said earlier, I think you would
12 pretty much have to hear the case. I don't think that you
13 can, you know, skip the trial and move directly into
14 sentencing.

15 Q. Assuming that you found me guilty of my role,
16 do you think it's something that maybe somebody like me, you
17 know --

18 A. Another thing would have to -- I don't know if
19 they could bring that up, would be past history, too. I
20 think everybody is entitled to a fair trial. I mean, are
21 you what do they call -- criminal crook or career criminal
22 --

23 Q. Career criminal?

24 A. -- first time offense and, you know, threat to
25 society? I think that the trial needs to be fair. Yeah, it

1 is possible you could get that.

2 Q. Okay. You wouldn't automatically take it off
3 the table for me?

4 A. Right. I wouldn't take it off the table or
5 put it on the table, but I would have to hear all the
6 evidence on that.

7 Q. You would have it available as an option for
8 the guy out in the getaway car?

9 A. Sure.

10 Q. I'll be honest with you. In this particular
11 case we're prosecuting Mr. Murphy as an accomplice, a
12 nontriggerman. That's the theory we're proceeding under and
13 that's why it's so important that we find out how you feel.
14 Because if you really, truly, couldn't consider the
15 possibility of sentencing a nontriggerman to death, then,
16 obviously, we need to know about it before you get on the
17 jury, because at that point it would cause problems once you
18 are on the jury and you just couldn't, for whatever reason,
19 didn't believe in the death penalty for the accomplices.
20 That's why it's important to know how you feel.

21 And I hear you saying, depending on the
22 facts and circumstances, that you can see where a death
23 penalty might be appropriate for an accomplice; is that
24 right?

25 A. Yes.

1 Q. And, of course, if you got into the trial, you
2 would hear that type of background information and that kind
3 of thing, the way the trial works. I'll go ahead and talk
4 to you about it right now.

5 If you are selected to serve as a juror,
6 the trial would, basically, be broken down into two parts.
7 The first part would be up to you to determine whether the
8 person charged with the crime committed the crime, whether
9 he was guilty or not guilty. And you, basically, just hear
10 the facts of the offense, the facts of the crime.

11 If you determined or found him guilty of
12 capital murder, then you move into the second or the
13 punishment phase of trial. And that's where you get to hear
14 about background. You know, maybe it was a first offense,
15 maybe they were a career criminal, that type of thing. And
16 you get to hear that information to help you, the juror,
17 answer these three questions.

18 And depending on the jury's answers to
19 those questions, the person convicted of capital murder
20 would either get that life sentence or a death penalty. So
21 that's kind of the overview of how it works. Does that seem
22 to make sense to you?

23 A. Uh-huh.

24 Q. In order to find an accomplice guilty, going
25 back to our example, you know, even though I had no intent

1 that anyone die in that bank robbery, I could still be found
2 guilty of capital murder as an accomplice, if I should have
3 anticipated that a life may have been taken.

4 You know, if I knew Mr. Shook maybe was a
5 bad guy, been to prison a couple of times, had a bad temper,
6 knew he was carrying a loaded gun, that type of thing, the
7 jury feels I should have anticipated that, then I could be
8 convicted of capital murder. Does that make sense to you?

9 A. Yes.

10 Q. Let me let you take a few minutes. I know you
11 may have looked at them in the booklet, but take a few
12 minutes and look at the Special Issues up there on the wall.

13 A. (Prospective juror complies.) Okay.

14 Q. Those are the three questions the jury has to
15 answer. Questions 1 and 2 start off with a no answer. It's
16 up to us, the State of Texas, to prove to you the answers
17 should be yes. Special Issue No. 1 or question No. 1 asks
18 the juror to look at and determine, make a prediction,
19 whether the person is going to be a future danger to
20 society, basically. You can look back at the crime he was
21 convicted of and that's when you get to look, you know, at
22 his criminal record or his lack of a criminal record to help
23 you make that determination.

24 Is that something that you feel you can
25 do, make that prediction if you had some information?

1 A. Yes.

2 Q. If the answer to that is yes, you move on to
3 the second Special Issue and that kind of deals with the
4 situation we talked about before, the accomplices. You
5 know, if you found out -- if you think the person actually
6 pulled the trigger, it's an easy answer. If you think they
7 intended the person to be killed, obviously, you can answer
8 that question yes. Or kind of what we've already talked
9 about, if you think that they anticipated a human life would
10 be taken as an accomplice, a nontriggerman, then you would
11 answer that question yes.

12 And it's a little bit higher standard
13 from finding somebody guilty of capital murder. Instead of
14 finding that they should have anticipated to find them
15 guilty, in order to impose the death penalty, you have to
16 find that they actually anticipated, that they did
17 anticipate that a life would be taken. Does that kind of
18 make sense to you? It's kind of a fine distinction, but we
19 raise the burden a little bit before we actually impose the
20 death sentence, the death penalty, on someone. Does that
21 make sense to you?

22 A. Yes.

23 Q. Okay. And then, finally, with Special Issue
24 No. 3, that's kind of the last step or the last stop in the
25 process. Neither side has the burden of proving that to

1 you. That's just up to you as a juror. That, basically,
2 asks the jury, you know, it's the last thing they do before
3 a death sentence is imposed. If you have answered yes and
4 yes to 1 and 2, we ask you to go back and look at the crime,
5 look at what you know about the person, what sort of blame
6 he bears, and ask yourself, is there something mitigating,
7 something that lessens his personal blame or his moral
8 responsibility to that crime, such that his life ought to be
9 spared, you know, to avoid the death penalty. Does that
10 make sense to you?

11 A. Yes.

12 Q. It's kind of the final safeguard in the
13 system. You know, it's kind of like a set of filters. You
14 run these cases through these three filters to make sure
15 only the really, truly deserving people actually get the
16 death penalty. And that's just up to the jury. There's no
17 -- you don't have to consider any particular thing
18 mitigating or not. You just have to be, you know, you just
19 have to be able to tell us you can keep an open mind even at
20 that late part of the process. If you heard something
21 mitigating where you think his life ought to be spared, that
22 you can answer that question. Does that sound like
23 something you can do?

24 A. Yes.

25 Q. Okay. Mr. Arena, do you have any questions

1 about anything we've talked about?

2 A. No.

3 Q. Okay. Give me just a second here to finish
4 looking through your questionnaire. Let me ask you this.
5 Typically, in these type cases, the death penalty cases, one
6 or both sides may call like a psychiatrist or psychologist
7 or some type of mental health professional to try to give
8 the jury some possible help in answering these questions.

9 Just kind of generally, how do you feel
10 about those type people, the psychiatrists, psychologists,
11 mental health professionals?

12 A. I don't really know what kind of answer you
13 want to that.

14 Q. I guess, I'm not looking for any particular
15 answer. I just -- the law would require that any witness,
16 whether they are a police officer or psychiatrist, when they
17 walk in, the jury at least starts off with that open mind
18 and, you know, doesn't give them a leg up because they have
19 a particular profession, doesn't give them a leg down
20 because they have a particular profession.

21 And some people tell us, very frankly, I
22 don't trust psychologists. I don't trust psychiatrists. I
23 don't care who they are or what they say. I don't believe a
24 word out of their mouth. I just don't believe in that. If
25 you brought one in here, in all honesty, I probably wouldn't

1 give any weight to their testimony, because even without
2 having heard what they said or heard their qualifications,
3 I'm just not going to buy off on that type of testimony. A
4 lot of people tell us that.

5 I'm just kind of curious how you come
6 down on that issue?

7 A. I don't see a psychiatrist, don't plan to ever
8 do. I guess I would feel that it wouldn't be as strong in
9 the trial as, you know, witnesses and lawyers, prosecutors,
10 and all that. It wouldn't -- on a scale of 1 to 10, I might
11 give it a 2 or 3 on listing.

12 Q. Do you think you could keep that open mind and
13 listen to them and if what they said made sense, you could
14 go with it, and if it didn't, you could just disregard it,
15 that type thing?

16 A. Yeah. I feel that I'm openminded.

17 Q. That's basically all the law requires, is that
18 you keep an open mind throughout this process, just to give
19 both sides a fair trial.

20 MR. WIRSKYE: Thank you. That's all the
21 questions I have, Judge.

22 CROSS-EXAMINATION

23 BY MR. SANCHEZ:

24 Q. Good afternoon, Mr. Arena.

25 A. Good afternoon.

1 Q. My name is Juan Sanchez and I'm going to be
2 asking you some questions. Myself, along with Brook Busbee
3 here, represent Mr. Murphy. And the State gets to go first
4 and they get to outline the law for you. But there are some
5 questions that I need to ask you. And, of course, you know
6 yourself better than anybody in this room and I want to get
7 your honest and true answers on how you feel. Okay?

8 Because a lot of us, I think, we think we
9 can follow the law, we think we are openminded people, but
10 when it comes to certain types of cases, we may not be.
11 Okay? Or we might have feelings that are so strong or
12 formed certain opinions that it would affect us and bias us
13 in certain decisions. Okay?

14 And that's why I want to ask you on a
15 case as important as this, where you would be making, if you
16 are on the jury, a life or death decision, why you answered
17 certain questions a certain way in your questionnaire. Is
18 that fair enough?

19 A. That's fair.

20 Q. If you look on page 3 of your questionnaire,
21 somewhere in the middle, there's a question that says, if
22 you are in favor of the death penalty in some cases, do you
23 agree that a life sentence rather than a death penalty would
24 be appropriate under the proper circumstances in some cases?
25 Do you see that there?

1 A. Yeah. Okay.

2 Q. And you marked no?

3 A. Okay.

4 Q. What were you thinking when you did that?

5 A. Well --

6 Q. When you marked no, can you explain a little?

7 A. It's like I said earlier, you have to hear
8 everything. I mean, you just can't skip the trial and go
9 directly into sentencing. I mean --

10 Q. Because the way this could be read, some
11 people think, hey, if I find somebody guilty --

12 MR. WIRSKYE: May we approach, Your
13 Honor?

14 THE COURT: You may.

15 (Bench conference)

16 Q. (By Mr. Sanchez) Sorry for the interruption
17 there. But I thank you very much for answering these
18 questions thoughtfully and honestly, and that's all the
19 questions I'm going to have at this point.

20 MR. WIRSKYE: Nothing further from the
21 State, Your Honor.

22 THE COURT: Mr. Arena, I want to thank
23 you for your time. The parties have agreed that they're not
24 going to put you on this jury. Thank you for your time and
25 service to the Court and you are free to go.

1 PROSPECTIVE JUROR: Thank you.

2 [Prospective juror out]

3 THE COURT: Christine Stucker.

4 [Prospective juror in]

5 THE COURT: Thank you. You may be
6 seated. Good Friday afternoon, Ms. Stucker.

7 PROSPECTIVE JUROR: Hi.

8 THE COURT: Did I pronounce that
9 correctly?

10 PROSPECTIVE JUROR: Correct.

11 THE COURT: Welcome to the 283rd. Have
12 you had an opportunity to review a couple of times the guide
13 I provided for you?

14 PROSPECTIVE JUROR: Yes.

15 THE COURT: I know I put an awful lot of
16 law in front of you and, trust me, you don't have to know it
17 all and understand it all at this time. The lawyers will
18 spend some time with you and give you examples and try to
19 help you understand how all this law interrelates with each
20 other. So I know it's somewhat kind of intimidating. You
21 come in here and you think that you might be on trial. But
22 this is as informal as we get. So I know people get nervous
23 and it's nothing to be nervous about. No wrong answers
24 here, just honest answers.

25 PROSPECTIVE JUROR: Okay.

1 THE COURT: Just honest answers. My job
2 is to, first, is to make sure that you understand the law.
3 That's my job. Once you understand the law, can you follow
4 the law? That's the big picture here. We get -- we educate
5 you to a point where you can understand the law and then can
6 you follow it? Only question I have for you, ma'am, is this
7 trial shall begin on the 10th of November.

8 PROSPECTIVE JUROR: Yes.

9 THE COURT: Can you serve this Court for
10 those two weeks?

11 PROSPECTIVE JUROR: Yes, sir.

12 THE COURT: Very good, thank you. Mr.
13 Shook?

14 MR. SHOOK: May it please the Court.

15 CHRISTINE STUCKER,
16 having been duly sworn, was examined and testified as
17 follows:

18 DIRECT EXAMINATION

19 BY MR. SHOOK:

20 Q. Ms. Stucker, my name is Toby Shook. I'll be
21 talking to you on behalf of the State of Texas this
22 afternoon. As the Judge said, we try to be informal. Have
23 you been down on jury service before?

24 A. No.

25 Q. Okay. Usually we talk to jurors just in a

1 group. Because it's a death penalty case, we use this
2 procedure where we talk to you individually. You filled out
3 a questionnaire, giving us a whole lot of information which
4 we appreciate. Believe it or not, it actually saves you
5 time and I'm going to follow up on some of that information
6 and talk to you about capital murder, the death penalty, how
7 you feel about that, and some of the laws that apply in this
8 case.

9 I see you have worked for -- is it
10 Trinity Industries?

11 A. Yes.

12 Q. For about 18 years?

13 A. Yes.

14 Q. You are vice-president of the Trinity Rail
15 Management, which you look like you work with the
16 maintenance of the cars, that sort of thing?

17 A. The maintenance of the rail cars.

18 Q. And you went to Baylor?

19 A. Yes.

20 Q. Looks like you got two degrees from Baylor?

21 A. Undergraduate and graduate degree.

22 Q. Did you go straight through?

23 A. No. I had a twelve-year gap between the two.

24 Q. Okay. Then you lived in the Dallas area for
25 approximately how long?

1 A. Eighteen years.

2 Q. Okay. From your questionnaire we asked the
3 general questions and then some followups whether you are in
4 favor of the death penalty. You said you were as a law in
5 favor of it. I would like you to just tell us in your own
6 words why you favor the death penalty and the purpose you
7 feel it serves society.

8 A. I feel if somebody is guilty of killing
9 somebody else intentionally, that it's a just penalty.

10 Q. Just depending on the particular facts of that
11 case?

12 A. Yes.

13 Q. Is this a belief in this particular law, is it
14 something you have grown up with and always believed in?

15 A. I'm not sure.

16 Q. Is there any time you remember in your life
17 when you decided you were in favor of it or is it just
18 something you just kind of gradually grew into or was there
19 a deciding event in your life that made you in favor of the
20 death penalty?

21 A. Definitely not a deciding event. I haven't
22 really thought about it a lot.

23 Q. Probably just something as you grew up. And,
24 obviously, the death penalty laws have always been around in
25 Texas. But you have never been opposed to it or anything

1 like that?

2 A. No.

3 Q. Okay. When you think of a capital murder case
4 or a death penalty case, what types of cases do you think
5 might be appropriate or what kind of cases come to mind in
6 your opinion or mind?

7 A. That would be appropriate for the death
8 penalty?

9 Q. For consideration of the death penalty.

10 A. Where the killing was intentional.

11 Q. Okay. Would you have it for any other crime,
12 other than some type of murder case?

13 A. No.

14 Q. Okay. You would reserve it just for certain
15 murder cases?

16 A. Yes.

17 Q. All right. Have you followed any cases in the
18 media locally or nationally that you thought this was a
19 death penalty case or looked like it could be a death
20 penalty case?

21 A. Followed closely or just kind of heard about
22 them on the news?

23 Q. Just heard about them.

24 A. Just probably heard about them on the news.

25 Q. What types of cases were those?

1 A. I think there's been a few with this Aubrey
2 Hawkins that's been the death penalty.

3 Q. Right. I was going to ask about that next.
4 Every juror, because this particular case has got a lot of
5 publicity, especially when it first occurred, some
6 subsequent, and almost every juror, I would say 99 percent,
7 have read or heard something about it, which doesn't make
8 you ineligible as a juror, necessarily.

9 The law contemplates, obviously, that you
10 would make your decisions just based on what you hear in the
11 courtroom and not what you have read in the newspaper or
12 seen on TV or heard on the radio.

13 What do you recall hearing about the case
14 when it occurred?

15 A. I really just remember one that it came back
16 as it was the death penalty. I don't remember reading the
17 details about it or anything like that.

18 Q. Do you remember much about the facts when it
19 first occurred, the reporting on what had happened?

20 A. Um, I remember that it was at Oshman's around
21 Christmas and that they fled to Colorado, I believe.

22 Q. Okay. So it's pretty general information that
23 you recall?

24 A. Yes.

25 Q. Would you be able -- we can't ask you to

1 forget what you heard. What we have to ask you to do is
2 make your decisions on what you hear here in the courtroom.
3 In other words, if you heard something different on TV, but
4 heard something completely different from the witnesses here
5 in the courtroom, you would have to, obviously, just rely on
6 what the evidence was that the witnesses produced in the
7 courtroom. You couldn't go in and go, well, I also heard
8 this on TV or I know this happened at another time, so I am
9 going to add that to my decision. You can't go in as a
10 juror in a case and let a newspaper report or a TV story
11 influence your decision. You have to make your decisions
12 just completely on the evidence as it's produced at trial.
13 Would you be able to do that?

14 A. Yes.

15 Q. Okay. In Texas there are only certain cases
16 and they have to be murder cases, intentional killings, that
17 can come into consideration for the death penalty. A lot of
18 brutal murders, intentional killings, occur in Texas that
19 they don't even qualify. You can get a life sentence or 99
20 years, but because of the rules that are laid down by the
21 Supreme Court and the laws enacted by the Legislature, we
22 reserve the death penalty for intentional killings with some
23 aggravating facts.

24 I think that the Judge probably has those
25 in the packet, but, basically, they are murder during the

1 course of a felony, such as burglary, a robbery, someone
2 goes in the 7-Eleven and murders the clerk. Murder during a
3 sexual assault, during a kidnapping or arson could be a
4 death penalty case. Also, murder of a police officer on
5 duty, fireman on duty, murder of more than one victim in the
6 same transaction or series of transactions, like a serial
7 killer situation, murder of a child under the age of six,
8 and murder for hire, someone does it for money or someone
9 hires someone to do it for money. But those are the
10 specific types of cases that have been reserved for the
11 death penalty.

12 The procedures are the same in each case.
13 The trial is divided into two portions. There's the
14 guilt/innocence stage where the State has to prove the
15 indictment to you beyond a reasonable doubt. If we fail to
16 do that, obviously, we will all go home with a not guilty
17 finding. But if we succeed in that, we move to the second
18 phase.

19 You may hear additional evidence in the
20 second phase. At the close of that evidence, you get these
21 Special Issues. We'll talk about those in more detail.
22 But, basically, what the State has to prove to you in the
23 punishment stage is that the defendant would be a continuing
24 danger to society, that he either intended the death of the
25 deceased or anticipated that that would occur, and that

1 there's not sufficient mitigating evidence to warrant a life
2 sentence.

3 So if those questions are answered yes,
4 yes, and no, in that order, the Judge has no choice. He
5 would sentence the defendant to death. If they are answered
6 any other way, again, he would have no choice. He would
7 sentence the defendant to life. But those are the only two
8 possible outcomes as far as punishment goes, once someone
9 has been found guilty of capital murder. Is that clear to
10 you?

11 A. Yes.

12 Q. Okay. Now, are you aware of the method of
13 execution in Texas?

14 A. Lethal injection.

15 Q. That's correct. It gets in the news a lot
16 from time to time, depending on political races or the
17 particular person that's up for execution. But you probably
18 know from growing up in Texas that the death penalty is a
19 punishment which is actually carried out. It's unlike in
20 some other states, it's not. But in Texas it is a penalty
21 that is sought and actually carried out every year.

22 The method is the same. The procedures
23 are the same in each case. If someone is sentenced to
24 death, this defendant were sentenced to death, he would be
25 placed on death row. At some point in time the Judge would

1 give an actual date of execution. On that date he would be
2 placed in the Huntsville prison, downtown Huntsville. On
3 the day of execution given time with family, friends, a
4 minister, a last meal.

5 But at 6:00 p.m. all executions take
6 place. He would be placed in the execution chamber. They
7 are secured to a gurney, needles placed in their arm.
8 Witnesses are brought in, reporters, who always report this
9 stuff in graphic details at times about what the person says
10 as his last words or gasp at the execution or whatever.

11 But at the appointed time after his last
12 statement, the warden simply signals the executioner, who
13 injects poisons which stop the heart and the lungs. Death
14 occurs within about 15 seconds generally. That would be the
15 method of execution in this particular case.

16 I don't mean to be morbid going into
17 that, but, you know, it's one thing when you come and you
18 hear this is a capital murder case or you talk about capital
19 murder and you are for the death penalty in casual
20 conversation, and it's quite another when you have to start
21 going through this process and realize that you may be on a
22 jury that decides these issues.

23 From our point of view, from the State of
24 Texas, we want to lay our cards on the table from the
25 beginning. We feel we have the type and quality of evidence

1 to prove the defendant guilty and that these questions
2 should be answered in a way that someday would result in his
3 execution. The defense takes the other view and that's why
4 we go through this process.

5 But I want you to -- what I want to do is
6 just let you know how serious we are, because the next
7 question I want to ask you is this. We can't go into the
8 facts of the case. We can't preview the facts. You told us
9 that you are in favor of the death penalty in certain cases
10 and all I want to know is this. If we prove these issues to
11 you, do you think that you are the type of person that could
12 take pen in hand and answer those questions in a way which
13 would result in another person's execution?

14 A. Yes.

15 Q. Okay. Now, when we talk about capital murder,
16 we generally think about the triggerman, obviously, being
17 prosecuted. If I go into a 7-Eleven and rob the clerk,
18 shoot him down, I can be arrested and prosecuted and could
19 receive the death penalty. But all crimes -- some crimes
20 can be committed by other persons, groups of persons, and we
21 call that the law of parties. Sometimes we have several
22 individuals that partake in a crime. Some participate more
23 than others, but it may take all of them together to pull
24 the crime off. The same is true of capital murder.

25 An example I give is if Mr. Wirskey and I

1 here decide to rob a bank. We get another accomplice to be
2 our driver. He pulls up. We say, keep the car running.
3 We're going to go in with our guns.

4 We go in with guns. We rob the bank. I
5 start covering the tellers. Mr. Wirskye is loading the
6 money up. I start shooting the tellers. Maybe I don't like
7 the way they are looking at me. Maybe Mr. Wirskye here says
8 they are going for an alarm or trying to get out the back.
9 Anyway, I kill one or two or however many. We run outside
10 and we're captured.

11 Obviously, I can be arrested and
12 prosecuted and could receive the death penalty because I was
13 the triggerman. The law says if Mr. Wirskye and the others
14 were actively participating in that crime, they could be
15 arrested and prosecuted for capital murder. They could
16 ultimately receive the death penalty, even though they are
17 not the triggerman, under the law of parties, again,
18 depending on the facts, of course, but they have to be
19 actively participating. And the State has to prove that
20 they anticipated that a death could occur.

21 Some people who are in favor of the death
22 penalty draw a line with just the triggerman, personally.
23 You know, they would say, I'm for the death penalty, if you
24 are prosecuting the person that actually caused the death.
25 I wouldn't for the accomplice. I might give them a life

1 sentence or 99 years. I'm not comfortable imposing the
2 death sentence on these accomplices. If it were up to me,
3 that's where I would draw the line.

4 Other jurors tell us, I'm in favor of
5 capital murder and the death penalty, and I can -- I do
6 believe in certain situations giving the nontriggerman the
7 death penalty, an accomplice, depending on their role in the
8 case, obviously. And they agree with the law in that
9 aspect.

10 We want to ask each juror how you feel
11 about that, the prosecution of someone who is a
12 nontriggerman for the death penalty. Do you agree that the
13 law should allow that or do you disagree with that aspect of
14 it?

15 A. I guess it would depend on the facts of the
16 case. But if they actively participated and contributed, I
17 guess that I would tend to agree.

18 Q. Okay. What would be important to you? How
19 actively they were involved or what?

20 A. In your example, if the person in the car
21 didn't know that they had guns or something like that, then
22 I would say I would disagree. But the guy that was helping
23 and knew that guns were pointed on people, probably say the
24 death penalty would be okay.

25 Q. Okay. You bring up a good point, then. It's

1 the person's actual knowledge of exactly what was going on,
2 how dangerous these other individuals were, that sort of
3 thing?

4 A. Yes.

5 Q. A big factor to you would be their knowing
6 whether they possessed weapons?

7 A. Yes.

8 Q. A lot of jurors have told us that. Let me put
9 one other minor point. If you are going to be prosecuted as
10 an accomplice, the law says that mere presence alone doesn't
11 make you guilty. If we had tricked the driver, said, hey,
12 we need to cash a check. Take us down to the bank. And
13 when we go in we pulled guns out and he doesn't know about
14 it, we couldn't even prosecute him for capital murder, if,
15 indeed, those were the true facts. Now, if we said, we are
16 going to rob them and get some money, will you help us, and
17 he didn't really know we had guns, that could be a point you
18 brought up. He might be guilty of a lesser and he might be
19 guilty of the capital, but not get the death penalty. But
20 it all has to do with how much they participated in the
21 event. If you actively participated, if you helped and
22 aided, you could be prosecuted and found guilty and
23 ultimately receive the death penalty. That's one theory.

24 The other theory is by conspiracy. They
25 cover the same type of facts. If Mr. Wirskye and I, we

1 enter into a conspiracy to commit one crime, in this case
2 the aggravated robbery, and the jury believes that we should
3 have anticipated that a death could occur as a result of
4 pulling that off, i.e., you go in and pointing guns at
5 people, then you can be found guilty. Everyone can be found
6 guilty that participated in that crime. It just depends on
7 the facts. Ultimately the accomplice could get the death
8 penalty, if the jury believes that not only should they have
9 anticipated, but they did anticipate. That would come down
10 to the facts.

11 From what I hear you telling us, is that
12 you agree with the law that an accomplice can be prosecuted
13 for the death penalty. You could actually render that
14 verdict, but it would just depend on the facts and their
15 participation and that sort of thing; is that right?

16 A. Yes.

17 Q. Okay. Again, I can't go into the facts of the
18 case, but I do want to lay my cards on the table. That's
19 the theory the State is going on in this case. We are
20 prosecuting Mr. Murphy under the law of parties as an
21 accomplice to these events. You don't have a problem with
22 that?

23 A. No.

24 Q. Okay. Now, let's talk about these Special
25 Issues for a moment. You don't get to these unless you have

1 found the defendant guilty of capital murder. Then we move
2 to the punishment phase where you can hear additional
3 evidence and then you would get these Special Issues. I
4 want to go over these one at a time. You may have read them
5 in the back, but, if you would, just read Special Issue No.
6 1 to yourself.

7 A. (Prospective juror complies.) Okay.

8 Q. This question asks that the jurors kind of
9 make a prediction about how the defendant would behave in
10 the future. Do you feel comfortable making that kind of
11 prediction or answering that question, if you are given
12 sufficient evidence or sufficient facts?

13 A. Yes.

14 Q. Okay. What types of information would be
15 important to you in deciding something like that?

16 A. Their history.

17 Q. Okay.

18 A. Maybe their remorsefulness.

19 Q. Okay. Criminal history does come into play.
20 If a person has a criminal history, you can hear from those
21 witnesses if they are available. If there is remorse or
22 something good about the defendant, you can hear about that,
23 too.

24 What would be important about a person's
25 remorse? I take it if you believe they were truly

1 remorseful, that sort of thing?

2 A. Yes. If they were truly remorseful, I may
3 tend to think they were not a continuing threat.

4 Q. Okay. That would just be, I guess, facts you
5 draw from each particular case?

6 A. Yes.

7 Q. Okay. Now, you can also decide this case on
8 the facts of the offense, too, the role involved, the
9 brutality of the killing, that sort of thing. Obviously, we
10 will give you the information about how dangerous they are.
11 This question starts out with a no answer and the State has
12 to prove to you beyond a reasonable doubt it should be
13 answered yes. So it's kind of a presumption of no, then we
14 have to prove to you it should be answered yes.

15 There aren't any automatic answers to
16 these questions. In other words, just because you found him
17 guilty of capital murder, you don't automatically answer
18 this question yes. There could be some cases where someone
19 is guilty of committing a capital murder, but you may not
20 believe they are a continuing danger. The example you gave
21 is maybe they showed true remorse in your mind. It would
22 just depend on the facts.

23 What the law requires you to do is wait
24 until all the evidence is in, in the punishment phase, go
25 back in the jury room, weigh the evidence, and then the

1 facts you heard in the guilt/innocence stage, along with
2 anything new, and then make this decision, did the State
3 prove it beyond a reasonable doubt that it should be
4 answered yes?

5 Do you feel that you can do that and wait
6 until all the evidence is in and then make your decision?

7 A. Yes.

8 Q. Okay. It's kind of just common sense deal,
9 obviously, but the law does anticipate that the jurors will
10 wait and not put in automatic answers. There wouldn't be
11 any need for those questions, if there were automatic
12 answers. Like any major decision you make, whether buying a
13 house or anything with your business, obviously, you are
14 going to gather all the information and then make your
15 decisions or recommendations, whatever you do.

16 The second question, if you will take a
17 moment to read that to yourself. That has to do with this
18 parties question.

19 A. (Prospective juror complies.)

20 Q. This question also starts out with a no answer
21 and it has -- and we have the burden of proof to prove to
22 you beyond a reasonable doubt it should be answered yes.
23 It's answered independently of question No. 1, or your guilt
24 finding, too. You have to wait and listen to all the
25 evidence. You can use the evidence from the guilt/innocence

1 stage and anything in their background you have learned in
2 the punishment stage to answer that question.

3 It's divided up into several parts. The
4 first part, whether the defendant actually caused the death
5 of the deceased. Obviously, that's pretty simple if you
6 believe he's the triggerman, you can answer it yes. Or did
7 not actually cause the death of the deceased, but intended
8 to kill the deceased or another or anticipated that a human
9 life would be taken. The intent is gathered from the
10 evidence and their actions. If he's just an accomplice, but
11 you believe the State showed that he had the intent to kill
12 the deceased or someone else, even, or what we went back to
13 at the beginning, he anticipated that a human life would be
14 taken. Again, that would just be based on the facts. The
15 examples we went over is about how much knowledge the
16 accomplices had of weapons and how dangerous they were and
17 that sort of thing.

18 If we prove that beyond a reasonable
19 doubt, based on his criminal history and the facts of the
20 case, you could answer that yes. Otherwise, you would leave
21 that as a no answer. Do you feel that you can do that?

22 A. Yes.

23 Q. Okay. Now, this last Special Issue, that's
24 the mitigation question. It's a little different. Neither
25 side has the burden of proof. We don't have to prove it

1 should be answered no. The defense doesn't have to prove it
2 should be answered yes. Common sense will tell you,
3 honestly, that's the way we will be arguing, though, but
4 there's no burden of proof like there is on the first two
5 questions. It's kind of a safety net. It allows you to
6 review all the evidence you have heard in the defendant's
7 background and the crime and then decide if you think a life
8 sentence should be imposed rather than a death sentence.

9 It asks whether taking into consideration
10 all the evidence, including the circumstances of the
11 offense, the defendant's character and background and the
12 personal moral culpability of the defendant, there is
13 sufficient mitigating circumstance or circumstances to
14 warrant that a sentence of life imprisonment rather than a
15 death sentence be imposed. Again, it just takes in
16 everything.

17 I can't tell you what mitigating evidence
18 will be. It's up to you and the other jurors. You don't
19 even have to agree with the other jurors on what mitigating
20 evidence is.

21 As you sit here today, does anything come
22 to mind as what you might view as potentially mitigating
23 evidence?

24 A. No, I can't think of anything.

25 Q. That's fine. I would say 99 out of a hundred

1 jurors give us that answer. We hope you haven't been
2 thinking about these issues. I don't think that you would
3 be. But all -- and you don't have to be able to think of
4 anything. You just have to be able to tell the Court you
5 can keep your mind open to it.

6 You don't get to this decision unless you
7 have found someone guilty, found they are dangerous, found
8 they anticipated a life would be taken. But the law
9 envisions that there might be some circumstance in their
10 background or the facts of the case where you think a life
11 sentence should be imposed rather than a death sentence.
12 You just think it might be the right thing to do.

13 Like I said, it could be anything. We've
14 gone over many examples with jurors. One juror might think
15 young age might be potentially mitigating, a 19, 18 year old
16 that committed a capital murder. Other jurors tell us if
17 they are acting as an adult, making rational decisions, no,
18 that wouldn't be. That might be aggravating. They don't
19 have to agree, you know, or anything like that.

20 Sometimes you hear evidence of a person's
21 background. Maybe they were physically or mentally abused.
22 Maybe they grew up in a poor home, maybe a broken home. We
23 have jurors that have told us that potentially could be
24 mitigating, depending on the severity. And we have other
25 jurors have told us, you know, I would feel bad for them,

1 but, look, a lot happens to a lot of folks. And when you
2 are an adult, you have to be held accountable for your
3 decisions, and I don't believe that is really mitigating.

4 How do you feel about those type of
5 issues? Do you view those as potentially mitigating or are
6 those things that should be considered, but, obviously,
7 people ultimately have to be held accountable?

8 A. I think maybe I would consider them, but I
9 don't think they would automatically be mitigating.

10 Q. Okay. What would be important to you about
11 those different types of issues?

12 A. Probably the severity.

13 Q. Of their upbringing?

14 A. Uh-huh.

15 Q. Would that have to do with a young person that
16 was on trial, older person on trial, or just depend on the
17 particular facts?

18 A. Probably take it more into consideration if
19 they were young.

20 Q. Okay. The older a person gets, you feel that
21 they have had time to change, at least get past that, and
22 that wouldn't be as mitigating as, say, an 18 or 17 year old
23 or 19 year old or someone like that?

24 A. Yes.

25 Q. Okay. Again, there's no requirements on what

1 you view as mitigating. Really, the bottom line is can you
2 keep your mind open to it and if you think something is
3 sufficiently mitigating, you can answer the question that
4 way?' Do you feel that you can do that?

5 A. Yes.

6 Q. If you don't think something comes to the
7 level of mitigation, you could answer the question no.
8 Could you do that?

9 A. Yes.

10 Q. Knowing that when you do that, the defendant
11 would be executed at some point down the line?

12 A. Yes.

13 Q. Okay. There are certain rules or laws that
14 apply to each criminal case, not just capital murder cases.
15 I want to go over those briefly with you. One is the burden
16 of proof. The burden of proof is on the State of Texas.
17 That burden doesn't shift to the defense. You might
18 anticipate they may put on witnesses, cross-examine, or
19 argue, but they are not required to prove anything to you.
20 The burden of proof always stays at this table. If we meet
21 our burden, we're entitled to a guilty verdict. But if you
22 have a reasonable doubt and we don't meet our burden of
23 proof, you are obligated to find the defendant not guilty.
24 Can you do that?

25 A. Yes.

1 Q. You can't require the defense to prove his
2 innocence. Again, you might anticipate they will try, but
3 you can't put the burden of proof on them. It has to stay
4 here. You can follow that rule of law?

5 A. Yes.

6 Q. The burden of proof goes to every portion of
7 the indictment. If we fail in any one part of the
8 indictment and you have a reasonable doubt, you are
9 obligated, again, to find the defendant not guilty. You
10 have to be a neutral referee or umpire.

11 Let me give an example. One easy one is
12 at the end of trial if you have a reasonable doubt whether
13 we have proved the identity of the defendant as being the
14 killer, obviously, that would be a no brainer. You would
15 find him not guilty.

16 But that burden of proof goes to even the
17 county where this occurs. If we allege it happened in
18 Dallas County, if we didn't do a very good job of preparing
19 the case and found out maybe it was in the City of Grand
20 Prairie and it actually happened over in Tarrant County, we
21 would have messed up something as basic as the jurisdiction,
22 you, if you had a reasonable doubt about the county, you
23 would have to find him not guilty, just like you would on
24 the identity. You may not like it and we would be fired if
25 we did something that dumb, but you can't help us out.

1 And that's why I use that example. You
2 have got to just call the case just as you see it. And if a
3 reasonable doubt exists, you have to find the defendant not
4 guilty.

5 Could you follow that rule of law and
6 require us to prove every element of our case beyond a
7 reasonable doubt?

8 A. Yes.

9 Q. All right. The Fifth Amendment. Anyone who
10 wants to testify on their own behalf in a criminal case,
11 can. You would treat them like any other witness. If they,
12 the defendant, chooses not to testify, the law says you
13 can't hold that against them. You can't use that as
14 evidence against them. There could be a lot of reasons why
15 someone chooses not to testify. They may not be very well
16 educated and they may not make a very good witness, could be
17 very nervous. They could be just following their lawyer's
18 advice. It could be a lot of reasons. So the Court
19 instructs the jury, you just can't hold that against the
20 defendant or consider it in any way. Could you follow that
21 rule of law?

22 A. Yes.

23 Q. Police officers testify often in criminal
24 cases. A lot of people respect the job the police do. You
25 can't put police officers -- you can't give them a head

1 start over other witnesses without hearing them first. I
2 mean, after you hear them, you may find them very credible,
3 but they don't automatically get a head start. You have to
4 judge them like you would any other witness, recognizing, I
5 think, common sense, that police officers are like any other
6 profession, you have good ones and bad ones, credible ones
7 and uncredible ones.

8 Could you follow that rule of law and
9 just start out police officers like you would any other
10 witness?

11 A. Yes.

12 Q. Okay. Sometimes in criminal cases defendants
13 are found guilty of lesser included offenses. Like a
14 capital murder case, we often have the lesser included
15 offense of aggravated robbery. Maybe you have a reasonable
16 doubt about whether the defendant murdered someone, but you
17 do feel he committed a robbery.

18 In that case you don't get these Special
19 Issues. You would actually determine years from life to 99
20 years on the high end all the way down to five years in
21 prison on the other. The law, again, just contemplates or
22 requires jurors to keep their mind open to the full range of
23 punishment. If you think that 99 years or life is the right
24 thing to do after hearing all the evidence, you can assess
25 that. If you think as little as five years in prison for

1 aggravated robbery is the right thing to do, you can do
2 that.

3 Do you feel you can keep your mind open
4 to that full range and make the proper assessment, either
5 five to 99 or life or anywhere in between, just based on the
6 evidence?

7 A. Yes.

8 Q. Okay. Parole laws. Sometimes there is
9 stories in the news about our parole laws. In a capital
10 murder case the Judge would instruct you that a life
11 sentence, a capital life sentence, means the defendant has
12 to serve a minimum of forty calendar years before they can
13 even become eligible for parole. And that doesn't mean that
14 they are paroled at that time.

15 He would, also, instruct you that you
16 can't take parole laws into consideration. You just have to
17 consider a life sentence, a life sentence, and then make
18 your decision. Do you feel that you can do that?

19 A. Yes.

20 Q. Okay. Let me go over a couple of other
21 things. First of all, I have run through a bunch of this
22 stuff real quickly. Are there any questions that you have
23 over any of it?

24 A. No.

25 Q. Okay. You work in a company who regularly

1 uses attorneys, you said. You know attorneys. Any of them
2 criminal attorneys or are they more business litigation,
3 that sort of thing?

4 A. Business litigation.

5 Q. Okay. So you don't personally know any
6 criminal lawyers or people that practice criminal law?

7 A. No.

8 Q. Okay. I believe that's all the questions I
9 have and I appreciate your patience.

10 A. Okay.

11 THE COURT: Ms. Busbee?

12 CROSS-EXAMINATION

13 BY MS. BUSBEE:

14 Q. Ms. Stucker, I'm ignorant about what you do
15 for a living. Can you kind of tell us what you do all day
16 long, what your job consists of? I know you say repair rail
17 cars. I'm assuming that you supervise what they do. I
18 don't think you go out there with a hammer or a wrench or
19 whatever you use, but I'm guessing on a pretty high level.
20 So what sort of people do you deal with all day long?

21 A. What I do is, we build rail cars and then
22 people who don't want to buy them, lease them from us. So
23 we have a lease fleet of cars and usually the people, they
24 are shipping a product, they don't understand rail cars, but
25 they understand the product they are shipping in the rail

1 car. So it would be comparable to like a warranty on a car,
2 that every time I have a problem, I turn it over to you and
3 you fix it and you keep it within regulations and then we
4 contract that out to shops, repair shops. So I deal with
5 sales people and customers and repair shops and vendors for
6 parts and things like that.

7 Q. So daily hassle this, that, and the other?

8 A. Yes.

9 Q. And I notice you said this organization you
10 belong to, and based on your degree, are you a CPA?

11 A. Yes.

12 Q. Does that come into your day-to-day dealings
13 or have you been promoted into the position you are in now?

14 A. I used to be in accounting. Now I no longer
15 really work on a day-to-day basis on accounting.

16 Q. You made some mention that there would be some
17 problem if you were gone for two weeks. Would you elaborate
18 on that for us? You might have some problem arranging your
19 work schedule?

20 A. Well, I travel probably every other week for
21 work. So November would probably be an easier month, since
22 it has holidays in it and there's less travel. But that was
23 really the issue.

24 Q. As the Judge has said to you, that's not an
25 excuse, but sometimes we like to know just how pressing it

1 would be, so we would know if someone is sitting in the jury
2 box and they are in a constant state of panic because of
3 what is going on in the work place, that's one thing. But
4 if they can work around it, that's acceptable to everybody.

5 So you are telling us you think you can
6 work around that, particularly in November?

7 A. Yes.

8 Q. Good deal. Who's Mark Stiles? I may be
9 stupid, but you put that as someone you admire?

10 A. He works at our company and he used to be in
11 -- a Legislator in Austin for about 17 years.

12 Q. And is he your supervisor or company owner?

13 A. He's a senior vice-president.

14 Q. And I notice that, like me, you like to
15 decorate. I was wondering if you developed your dislike of
16 Martha Stewart before or after?

17 A. I think I developed it because of things I
18 heard about how she treated other people.

19 Q. Yeah. I've heard those things, too, because I
20 just think it's impossible to imagine anybody could live the
21 way she wants everybody to live. But anyway.

22 This is a situation. You may possibly be
23 on this jury and, believe me, we have talked to a lot of
24 folks, not as many as we're going to, but we get in a
25 cadence sometimes, or the jurors do, with the State because

1 it's yes or no answers.

2 And I don't have any doubt that you
3 understand what the issues are. But I want to ask it in a
4 plainer way. Since you have had things explained to you, at
5 the same time you are being asked if you agree, sometimes
6 I'm not clear on what the final answer is.

7 So you have said that, obviously, if
8 someone is an accessory or party to a capital murder they
9 could be convicted of the offense of capital murder, but
10 there's an additional element to the issue of punishment, if
11 someone is not actually the person who pulled the trigger,
12 is the expression that we're using.

13 I understand that you understand
14 completely this question of probability on Special Issue No.
15 1. But on Special Issue No. 2, and that's going to be, I
16 think, very critical in this case. The question is whether
17 or not that person anticipated that a human life would be
18 taken.

19 When we say anticipate that an event will
20 occur, what does that say to you? Well, I'm not asking that
21 right. If you are being asked to find that someone
22 anticipated something beyond a reasonable doubt, what sort
23 of matters of proof do you think that you would need to hear
24 before you can say beyond a reasonable doubt that that
25 person anticipated the murder?

1 A. Well, anticipated, maybe if there was
2 conversations before the robbery took place that no matter
3 what happens, if anybody gets in our way, we need to kill
4 them or just something like that. If somebody fired a gun,
5 but missed, maybe that means that they intended to kill. So
6 it would just be probably based on the facts of the case.

7 Q. Okay. Now, you did mention that you thought
8 you were in favor of rehabilitation, which is a common
9 concern of people. How would you feel about a psychiatrist
10 or a mental health professional's testimony in assisting you
11 with questions concerning Special Issue No. 3? Would it be
12 important to you what that -- and at this point, you know,
13 I'm not going to say psychologists, sociologists,
14 psychiatrists, I don't know who the State may call. But
15 just in general that type of professional, what do you think
16 about the kind of testimony or evidence that they could give
17 you in a situation? Would it be helpful to you?

18 A. Probably would depend on how long they had
19 spent with the person, if it was 20 minutes or 30 minutes,
20 or if they had a history of dealing with the person.

21 Q. I would expect you to take that into
22 consideration. We used to see people coming up here and I'm
23 talking about a long time ago, who would just have a bare
24 bones idea of what the facts were and get up there and
25 testify about things. And I wouldn't expect the juror to

1 give that much credibility.

2 But you would take, depending on what the
3 degree of their familiarity was, and, of course, I assume on
4 whether or not they seem credible to you, you would take
5 that into consideration on this issue of mitigation?

6 A. Yes, I think I could.

7 Q. I call mitigation something different than
8 this lengthy definition that some people like. To me,
9 mitigation is there's something about either what happened
10 in the case or what happened or that anything I have heard
11 as a juror in the first or second part of trial that softens
12 my heart against the individual on trial that makes me think
13 that a life sentence would be proper instead of a death
14 sentence. To me, that's an easy way to say mitigation,
15 because mitigation is different for every person. But the
16 effect of mitigation is that a person who is going to be a
17 future danger and knew that a murder was going to happen, I
18 will not give him the death penalty based on other things
19 that I have heard in this case. Can you do that in the
20 proper case?

21 A. Say it one more time.

22 Q. Okay. That's the thing. He calls them
23 filters. I think of them as hurdles for the State because
24 those first two issues, the State has to prove beyond a
25 reasonable doubt. Future dangerousness, absolutely beyond a

1 reasonable doubt. Issue No. 2, anticipated a death would
2 occur, beyond a reasonable doubt. That's not anything that
3 I, necessarily, or we, necessarily, have to give you
4 anything on.

5 But the Special Issue No. 3, you come to
6 after you have already made these two previous decisions
7 beyond a reasonable doubt. A future threat, a future
8 danger, knew this was going to occur, guilty of capital
9 murder precedes all that.

10 After you have made all those decisions,
11 could you answer Special Issue No. 3, yes, he should receive
12 a life sentence instead of a death sentence?

13 A. I don't -- I just on Special Issue No. 3, I
14 can't think of -- it would have to be something really big
15 to mitigate, if I've answered the first two affirmatively,
16 but it would have to be something really big. And I just
17 don't want to draw a line in the sand and say absolutely
18 not, if, you know, there's nothing that could mitigate that.
19 There could be. I can't think of what it would be.

20 Q. You don't have to. You don't have to. You
21 just have to say that I could just decide to impose a life
22 sentence instead of a death sentence, even though I found
23 Special Issue No. 1 and No. 2 to be true for it to be
24 answered yes, and if you can -- that's the thing, you know,
25 we can't say we're going to prove this and they're going to

1 prove that and then what would you do, because, obviously,
2 that would -- that would be a crazy way to pick a jury.
3 We'd have to try the case every time we talked to someone
4 and it wouldn't be fair because it would be us telling you
5 what we think is going to happen.

6 If you really think that you could never
7 consider Special Issue No. 3, I would ask you to tell us
8 that, because it's better to err on the side of caution
9 because that's erring on the side of fairness.

10 But if you can consider it, and you don't
11 have to tell me what it would be. I'm not asking you that.
12 You just honestly tell me that in the abstract you could
13 consider a life sentence instead of the death sentence when
14 you get to that question, because you don't get there unless
15 you have already decided the other two, then that's really
16 all I'm asking.

17 A. Yes, I could do that.

18 Q. Now, we have beat you up to death over
19 questions. Is there anything that you are concerned about
20 or you want to tell us that we didn't ask you, which I'm
21 sure we do in every case, but sometimes I like to ask people
22 what did you want to tell us or what did you think we would
23 ask you that would be a problem? Do you have any thoughts
24 like that?

25 A. No.

1 Q. Okay.

2 MS. BUSBEE: Pass the juror, Your Honor.

3 THE COURT: Ms. Stucker, please wait for
4 us outside and we'll have you back in just a minute.

5 [Prospective juror out]

6 THE COURT: What says the State?

7 MR. SHOOK: State has no challenges for
8 cause.

9 THE COURT: What says the defense?

10 MS. BUSBEE: No challenge for cause.

11 THE COURT: Would you like to step into
12 your office?

13 MS. BUSBEE: No, sir.

14 THE COURT: What says the State? Do you
15 accept this juror?

16 MR. SHOOK: State accepts the juror.

17 MS. BUSBEE: Defense accepts this juror.

18 THE COURT: Invite Ms. Stucker back in,
19 please.

20 [Prospective juror in]

21 THE COURT: Thank you, you may be seated.
22 Ms. Stucker, I want to inform you that you have been
23 selected and you shall sit as a juror in this case.

24 PROSPECTIVE JUROR: Okay.

25 THE COURT: It's natural at this point

1 when you go back to the office on Friday afternoon, they
2 know where you've been, don't they?

3 PROSPECTIVE JUROR: Yes, they do.

4 THE COURT: Sure, they do. What do you
5 think will happen, if you go back and tell them that I've
6 been selected as a juror to sit in this case?

7 PROSPECTIVE JUROR: They are going to
8 want to talk about it.

9 THE COURT: They are going to want to
10 talk about it. And the lawyers are very satisfied with your
11 opinions and what you know about the law. So as soon as you
12 go back and tell them, talk about it, then they are going to
13 offer their opinions. And we like yours.

14 For that, I'm going to give you some
15 written instructions and it simply highlights -- we're doing
16 it far enough out, just like I did the special venire back
17 in May. I want to be as convenient with your time and not
18 waste your time. But we're very tight on our schedule. We
19 start, we start on time. And when I gave you the guide,
20 when I tell you I start trial at 8:30, that means we start
21 at 8:30 because we're using your time, so I respect that.

22 But you are going to have to -- you have
23 a long enough time to arrange your schedule so you won't
24 book any travel for those two weeks in November and then
25 that's the two weeks prior to the week of Thanksgiving. So

1 it was intentionally set that week so we can be sure we're
2 way through with this case before we get to Thanksgiving.

3 PROSPECTIVE JUROR: Okay.

4 THE COURT: So go back and you need to
5 tell your supervisor only, the people who need to know that
6 you are going to have to take those two weeks off.

7 PROSPECTIVE JUROR: Okay.

8 THE COURT: Anything else around the
9 water cooler will be just what we don't need. So I have
10 provided some written instructions for you. That's just to
11 give you, once again, the address, phone numbers, and the
12 Sheriff is going to go over with you this information sheet.
13 What we've done is taken the information you've written down
14 and your handwriting is a lot better than most, but we have
15 to have contact information. So I want you to very
16 carefully look at the way we have your name spelled and
17 phone numbers and Internet and e-mail and that's simply to
18 be able to get in contact with you. As you can see, I've
19 been on the computer all the time.

20 I told you in the special venire
21 downstairs that the information you provide is under my lock
22 and key. I have the originals in my office. I have scanned
23 that information so that the only way we can get at it is
24 by password. The copies that the attorneys have will be
25 destroyed.

1 The only way this information will be
2 released is on an order from the Court of Criminal Appeals
3 in Austin. So I want you to be comfortable with the
4 information you have provided. It's simply for the Sheriff
5 to be able to make contact with you, because we will have a
6 short juror orientation sometime before the week of November
7 10th.

8 When I say that, it's when I get all
9 twelve people in the box, I'm going to have everybody back
10 down here to go over some general issues and have the
11 Sheriff go through their program with you. So you have got
12 one more day down here before you hear any testimony. So we
13 have to be able to get in contact with you and we'll do it
14 as convenient with your schedule. We try to do it first
15 thing in the morning, so we can get you out of here. Okay?

16 PROSPECTIVE JUROR: Okay.

17 THE COURT: That's what's ahead of you.
18 If you would, go with the Sheriff. She has got some issues
19 to visit with you about and if you will check this
20 information for me and we shall see you in the coming
21 months.

22 [Prospective juror out]

23 [End of Volume]
24
25

1 STATE OF TEXAS *

2 COUNTY OF DALLAS *

3 I, NANCY BREWER, Official Court Reporter for the 283rd
4 Judicial District Court, do hereby certify that the above
5 and foregoing constitutes a true and correct transcription
6 of all portions of evidence and other proceedings requested
7 in writing by counsel for the parties to be included in this
8 volume of the Reporter's Record, in the above-styled and
9 numbered cause, all of which occurred in open court or in
10 chambers and were reported by me.

11 WITNESS MY OFFICIAL HAND on this the 4 day of

12 March, 2004.

13
14
15 Nancy Brewer
16 NANCY BREWER, CSR, NO. 5759
17 Expiration Date: 12-31-04
18 Official Reporter, 283rd JDC
19 Frank Crowley Crts. Bldg. LB33
20 133 No. Industrial Blvd.
21 Dallas, TX 75207
22 (214) 653-5863/5
23
24
25

74851

REPORTER'S RECORD

VOLUME 12 OF 61 VOLUMES

TRIAL COURT CAUSE NO. F01-00328-T

STATE OF TEXAS * IN THE DISTRICT COURT
VS. * DALLAS COUNTY, TEXAS
PATRICK HENRY MURPHY, JR. * 283RD DISTRICT COURT

INDIVIDUAL VOIR DIRE

FILED IN
COURT OF CRIMINAL APPEALS

MAR 9 2004

Troy C. Bennett, Jr. Cler

On the 8th day of September, 2003, the following
proceedings came on to be heard in the above-entitled and
numbered cause before the Honorable Vickers L. Cunningham,
Sr., Judge Presiding, held in Dallas, Dallas County, Texas.

Proceedings reported by machine shorthand.

ORIGINAL

A P P E A R A N C E S

APPEARING FOR THE STATE

Mr. Toby Shook
SBOT NO. 18293250
And
Mr. Bill Wirskye
SBOT NO. 00788696
Assistant District Attorneys
133 No. Industrial Blvd.
Dallas, Texas 75207
Phone: 214/653-3600

APPEARING FOR THE DEFENDANT

Ms. Brook Busbee
Attorney at Law
SBOT: 03488000
703 McKinney Ave. Ste. 312
Dallas, TX 75202
214/754-9090

Mr. Juan Sanchez
Attorney at Law
SBOT: 00791599
5630 Yale Blvd.
Dallas, TX 75206
214/365-0700

PROSPECTIVE JUROR INDEX

<u>PROSPECTIVE JUROR</u>	<u>CRT.</u>	<u>STATE</u>	<u>DEFENSE</u>	<u>VOL.</u>
Everett Hulsey	4	5	37	12
Raymond Capetillo	45	47		12
Margaret Rehwinkel	54	57	88	12
Kathryn Ryan	108	109		12
Alicia Curtis	112	114	145	12
Linda Patterson	150	152		12

P R O C E E D I N G S

THE COURT: Mr. Hulsey.

[Prospective juror in]

THE COURT: Good morning, sir, how are you?

PROSPECTIVE JUROR: Fine.

THE COURT: We have your name as Everett Breck Hulsey, H-U-L-S-E-Y. How are you doing?

PROSPECTIVE JUROR: Fine.

THE COURT: Monday morning, first thing, you were scheduled to be the number three person, but since you were here first and ready first, we will put you on first. I appreciate people being on time and ready to go to work.

Did you have enough time to go through your orientation guide there to begin to think about what we're going to discuss today?

PROSPECTIVE JUROR: Yes.

THE COURT: You don't have to be able to give us all that law back and understand it completely right now. That's the objective this morning. The attorneys are going to go over the law with you. The idea is for you to think about it and see how it all interrelates. And my job is to be sure that at the end of the process, that you understand the law. Second question is can you follow the

1 law?

2 PROSPECTIVE JUROR: Yes.

3 THE COURT: That's the two objectives
4 here. Do you understand and once you understand, can you
5 follow? The only question that I have for you right now
6 from the Court, can you serve this Court for two weeks
7 beginning November 10th when this trial shall begin?

8 PROSPECTIVE JUROR: Yes.

9 THE COURT: Any other questions you have
10 before we begin?

11 PROSPECTIVE JUROR: No.

12 THE COURT: Mr. Wirskye?

13 MR. WIRSKYE: May it please the Court.

14 EVERETT HULSEY,
15 having been duly sworn, was examined and testified as
16 follows:

17 DIRECT EXAMINATION

18 BY MR. WIRSKYE:

19 Q. Mr. Hulsey, how are you this morning?

20 A. Fine.

21 Q. Thank you for being here. My name is Bill
22 Wirskye. I'll be the Assistant DA that's going to visit
23 with you for the next few minutes. What I would like to do
24 is maybe talk a little bit about some of your information in
25 the questionnaire, some of your background, and visit with

1 you a little bit about what you think about the death
2 penalty and finally maybe talk about some of the rules and
3 laws that may apply in this trial or a death penalty trial.

4 Do you have any questions before we get
5 started?

6 A. No.

7 Q. Okay. What went through your mind when you
8 found out you got called back for the individual interview?

9 A. I was kind of expecting it.

10 Q. Why were you expecting it?

11 A. I thought they were going to call everybody.

12 Q. We only call certain people, so I guess in
13 that sense you made the cut. In an ordinary case or a
14 nondeath penalty case, we talk to jurors as a group. But
15 since we are seeking the death penalty in this case, the law
16 requires that we talk to you individually. I know it's a
17 little bit uncomfortable because we have you up on the
18 witness stand and you kind of feel like you are on trial
19 sometimes and I apologize.

20 A. This is the first.

21 Q. Hopefully it will get more comfortable as we
22 go along. We'll try to make it as much like a discussion as
23 we can. What line of work are you in?

24 A. Printing.

25 Q. What do you exactly do on a day-in, day-out

1 basis?

2 A. I take care of the paper warehouse.

3 Q. And you have been in that line of work, I
4 think I saw 15 years or so?

5 A. Yes.

6 Q. Did you do anything before that? Any other
7 different type of work?

8 A. Yeah, I had a restaurant and worked in the oil
9 field.

10 Q. Okay. Did you have the restaurant here in
11 Dallas?

12 A. Ft. Worth.

13 Q. Okay. I grew up in Ft. Worth. Anything I may
14 have heard of or eaten at?

15 A. It was on Brentwood Stair and it was a
16 barbecue.

17 Q. How long did you do that?

18 A. Just a couple of years.

19 Q. Okay. It looks like you are a fisherman?

20 A. Yes.

21 Q. Based on your questionnaire and your shirt.
22 Fly fisherman?

23 A. No.

24 Q. Bass fisherman?

25 A. Yes.

1 Q. That's what I do as well. I'm trying to learn
2 to fly fish, but I'm not very good at it yet.

3 A. I think it would be good.

4 Q. It looks relaxing, but it drives me crazy. I
5 can't do it. You also mentioned that you had some friends,
6 maybe, that were attorneys and judges, that type of thing?

7 A. Yes.

8 Q. Who is that?

9 A. Judge Herndon in Oklahoma.

10 Q. Okay.

11 A. Judge Briar (phonetic) in Oklahoma.

12 Q. Do you have any friends that are attorneys or
13 judges locally?

14 A. No.

15 Q. You also mentioned, I guess, a former
16 co-worker of yours is on death row in Oklahoma; is that
17 right?

18 A. Yes.

19 Q. Could you tell us about that?

20 A. Um, he killed his father-in-law.

21 Q. Okay. Did that happen while y'all were
22 working together?

23 A. No. I didn't actually work with him. I
24 worked on the same rig with him, but I grew up with him.
25 The same as the judges, I grew up in a small town and I

1 pretty much knew everybody.

2 Q. Were you close friends with him?

3 A. Not close friends, but I was friends.

4 Q. Do you keep in touch with him at all?

5 A. Oh, no.

6 Q. Haven't had any contact with him since he's
7 been sentenced?

8 A. No.

9 Q. Based on what you know about the case, do you
10 have an opinion as to whether that was an appropriate
11 verdict?

12 A. I thought it was.

13 Q. Any hesitations going into this since you have
14 got a friend on death row that you might participate in a
15 capital murder or death penalty case down here in Texas?

16 A. No.

17 Q. You also told us -- let me see. I know you
18 got your questionnaire in front of you. It's kind of unfair
19 of us to question you on it after all this time, but under
20 prosecutors -- I'm looking at page 5, if you want to follow
21 along. We asked you kind of the first thing that pops in
22 your mind when you think about prosecutors and defense
23 lawyers. You said, you would hope they are honest.

24 I'm just curious, is that off the top of
25 your head or have you had some experience that led you to

1 make that statement?

2 A. No, that was mainly off the top of my head.

3 Q. And also further down the page on 5, we kind
4 of give you these statements and ask whether you agree or
5 disagree with them, that type of thing. And that very first
6 one, you said most criminals are actually victims of
7 society's problems. And you marked that you agreed with
8 that. And I just wanted to follow up with you and see
9 exactly what you were thinking on that.

10 A. I think a lot of it is upbringing, different
11 circumstances when people are growing up.

12 Q. Okay. Do you think that may explain why
13 somebody chooses a life of crime and that type of thing?

14 A. I think it personally does.

15 Q. Okay.

16 A. Some people just seem to be unexplainable.

17 Q. Some people just born bad, that type of thing?

18 A. Uh-huh, yes.

19 Q. Now, have you ever been on a jury before?

20 A. Civil suit.

21 Q. Okay. How long ago was that?

22 A. I want to say four or five years ago.

23 Q. Okay. Was that here in Dallas or Ft. Worth?

24 A. Dallas.

25 Q. Okay. What type of case was it, do you

1 remember?

2 A. It was a wrongful termination case.

3 Q. And did y'all actually reach a verdict in that
4 case?

5 A. Yes, we did.

6 Q. And it looks like you found against the
7 plaintiff or for the defendant; is that right?

8 A. Yes.

9 Q. Didn't award any damages or anything like
10 that?

11 A. No.

12 Q. You also told us in general that you were in
13 favor of the death penalty; is that right?

14 A. Yes.

15 Q. Okay. What value or what utility do you see
16 us having the death penalty in our society? What purpose do
17 you see in it?

18 A. Well, I just believe if you can't rehabilitate
19 somebody, that they're going to get what they deserve.

20 Q. Is there a particular type of facts or set of
21 circumstances? You have talked about your coworker's
22 circumstances, but a particular scenario that comes to mind
23 when you think about what may be appropriate for the death
24 penalty?

25 A. I'm not sure I follow that.

1 Q. Okay. Any particular type of case, maybe a
2 case you have heard or read about comes to mind or you have
3 heard about it and you say that person deserved the death
4 penalty or that should be a death penalty case?

5 A. Yeah. I really think when somebody is
6 committing a crime and they have a gun with them, they are
7 pretty much planning on possibly doing it.

8 Q. Okay. Like a robbery-type scenario, robbery
9 gone bad?

10 A. Yes.

11 Q. And we asked you at one point in the
12 questionnaire to rank yourself how strongly you feel about
13 the death penalty from a 1 to 10, 1 being the least and the
14 10 being the most. And I believe you gave yourself an 8.
15 Is that pretty indicative that you feel strongly about the
16 death penalty?

17 A. Yes, I do.

18 Q. Let me ask you this and I think kind of
19 following up what you said, that robbery scenario,
20 oftentimes people think that, you know, when you call a case
21 to mind you think about that person going in on a robbery
22 like a 7-Eleven with a loaded gun, at some point during the
23 robbery shooting and killing that clerk and trying to get
24 away, that type of thing, which would be capital murder in
25 Texas, murder, intentional murder, in the course of a

1 robbery.

2 But oftentimes crimes are not committed
3 by just one person. You would have groups or gangs of
4 people, you know, who commit a crime. In Texas the death
5 penalty is just not limited to the person that actually
6 caused the death. It's commonly what we call the
7 triggerman. Okay? The death penalty is not just limited to
8 that person.

9 Depending on the facts and circumstances,
10 the law also allows us to seek the death penalty against a
11 nontriggerman, what a lot of people call an accomplice. In
12 Texas we call them a party to a crime, but an accomplice to
13 a crime, the person that doesn't actually pull the trigger
14 or the person that didn't actually cause the death.

15 And we talk to a lot of people. Some of
16 them, you know, feel strongly about the death penalty, as
17 you have told us you do, but they just believe in the death
18 penalty for that person that actually took a life, you know,
19 for the triggerman. If it was up to them, they would take
20 the death penalty off the table for the accomplice or the
21 nontriggerman. For whatever reason they just don't feel the
22 death penalty is justified unless it's the person that
23 actually caused the death, so they would never have the
24 death penalty available, even for the accomplice or the
25 nontriggerman. What do you think about that type of

1 scenario?

2 A. I think it would depend on the situation.

3 Q. Okay. Anything that comes to mind that might
4 be important to you when you think about that type scenario?

5 A. I would think if the person that was the
6 accomplice was carrying a gun himself, that he was just as
7 guilty.

8 Q. Okay. That would be good evidence to you
9 that, I guess, that person's frame of mind or --

10 A. Or if he knew the other person was carrying a
11 gun.

12 Q. Okay. Let me give you a quick scenario or set
13 of facts and see what you think about it. Say Mr. Shook and
14 myself and one other friend decide we're going to commit a
15 bank robbery. We're going to rob a bank. We only have one
16 gun between us. The plan is for Mr. Shook to go in with the
17 pistol. I'm actually going to come into the bank, kind of
18 with the bag and collect the money. I'm going to be the
19 bagman. And our third friend is going to be the getaway car
20 driver. He's going to be outside. He'll drive us up to the
21 bank, wait outside. If he sees something going on, he'll
22 hit the horn and let us know we need to hurry up or get out
23 of there, that type of thing.

24 And that's what we agree to. We agree to
25 a bank robbery. And at some point during this process or

1 during the robbery for some reason, maybe Mr. Shook sees
2 somebody going for a silent alarm or going to call the
3 police, he shoots and kills a teller, okay? And after that
4 murder we get out of there. Get captured at some point down
5 the line.

6 Obviously, Mr. Shook has committed capital
7 murder, an intentional murder in the course of a robbery.
8 He could be punished potentially with the death penalty.
9 What do you think about the death penalty under that set of
10 facts for a person like me, the guy that went in, didn't
11 have a gun, was just the bag man?

12 A. Again, you would know that he had a gun when
13 you walked in.

14 Q. Okay. Do you think the death penalty may be
15 appropriate for somebody like me?

16 A. I think it could be.

17 Q. What about the getaway car driver, the guy
18 that --

19 A. The same. He knew. He was aware that they
20 had a gun when they went in.

21 Q. Just depending on the facts and circumstances?

22 A. Yes.

23 Q. Would it be a clear case for the death penalty
24 if I had a gun, as well, a loaded gun?

25 A. I think so.

1 Q. And that's basically what the law
2 contemplates. The law talks about, you know, if I help
3 Mr. Shook commit a capital murder, if I actively aid and
4 participate, direct him, encourage him, solicit him to
5 commit a capital murder, I could be found guilty.

6 I could also be found guilty, and this is
7 the case that we've talked about, if Mr. Shook and I
8 conspire or agree to commit robbery and if during the course
9 of that robbery, a capital murder has been committed, the
10 law says if I should have anticipated, if I should have
11 anticipated a death would happen, then at that point I could
12 be also found guilty of capital murder and potentially
13 receive the death penalty. That's the law.

14 And it kind of sounds like that's where
15 you are personally, kind of, from what we've talked about.
16 If I should have anticipated that a death would occur, you
17 can see convicting somebody like me of capital murder and
18 depending on the facts and circumstances potentially give
19 the death penalty; is that correct?

20 A. That's correct.

21 Q. Okay. And the reason we kind of have been
22 talking about this and I'll be up front with you, this is a
23 case where we are prosecuting the defendant, Mr. Murphy,
24 under that theory of accomplice or conspiracy liability as a
25 nontriggerman. The law allows us to do that and that's why

1 we spend so much time with people, such as yourself, making
2 sure that you can keep an open mind to the potential of a
3 death penalty for an accomplice or a nontriggerman.

4 Knowing that, do you have any hesitations
5 about potentially being a juror in that type of case?

6 A. No.

7 Q. Okay. We also talked to a lot of people, such
8 as yourself, you know, that may be quite strongly in favor
9 of the death penalty, kind of in the abstract or
10 philosophically in favor of it. When we talk to them down
11 here, it kind of hits home a little bit differently, I
12 guess, because there's a potential they may actually be
13 involved in a process that could end up with somebody like
14 Mr. Murphy lying dead, you know, on a gurney in Huntsville,
15 Texas, one day. And that, very frankly, is our goal in this
16 case.

17 So I want to make sure that you are --
18 comfortable is probably not a good word, but at least --

19 A. No, comfortable is not a good word.

20 Q. No one is comfortable with it. But we don't
21 want to put anybody in a tough position. We understand, you
22 know, not everyone is cut out for this type of process.
23 Even though you may philosophically or in the abstract be in
24 favor of the death penalty, we just want to make sure,
25 before you get in the jury box, it's something that you

1 think you can do. Because once you get over there, it's too
2 late. And if you kind of have a crisis of conscience or
3 just can't do it, at that point it's too late.

4 And that's why we need to talk to you
5 about it now. In Texas we don't ask the juror to make that
6 life or death decision, write in a life sentence or write in
7 death. We ask them to answer these three Special Issues
8 that you read about and are up on the wall and that kind of
9 determines what the appropriate sentence is.

10 But we want to make sure, we ask this to
11 everybody, that you feel you are the type of person that
12 could take pen in hand and answer those three questions in
13 such a way that it may result in the death of Mr.
14 Murphy someday, the death sentence. Do you feel like you
15 are the type person that could do that?

16 A. I feel like I would prefer not to.

17 Q. Okay. How come?

18 A. I just think I would think about it.

19 Q. Okay. You feel it might weigh on your
20 conscience?

21 A. I don't see how it wouldn't.

22 Q. Okay. And a lot of people tell us that.
23 Because, you know, as you are aware living in Texas and
24 having lived in Oklahoma, Texas is a very active death
25 penalty state. It's a reality in our state. Our juries

1 assess the punishment probably as much or more than any
2 other state and the death penalty is actually carried out in
3 this state, you know, more so than any other state in the
4 union. Texas typically leads the nation in executions.

5 And, you know, the press reports that.
6 You are going to hear the details of what may happen. If
7 the jury answers those three questions in such a way that
8 the death penalty is appropriate, the Judge has no
9 discretion. He will sentence Mr. Murphy, the defendant, to
10 an automatic death sentence. He would be taken immediately
11 down to death row.

12 Someday in the future, I can't tell you
13 how long, Judge Cunningham would actually set a date of
14 execution. And on that day he would be moved to the death
15 house in Huntsville to a cell, be given a chance to meet
16 with friends, family members, spiritual advisors, that type
17 of thing. And right before 6:00, which is the time mandated
18 for all executions in Texas, he would be taken from that
19 holding cell, either voluntarily or involuntarily, taken
20 into that death chamber. You have probably seen a picture
21 of it. It has the gurney and leather straps. Strapped
22 down, again either willingly or against his will, by the
23 guards.

24 And an IV would be started and there
25 would be two viewing rooms, one for the victim and victim's

1 family members and one for his friends, family members,
2 spiritual advisors. Once that IV was started, he would be
3 given a chance to make a last statement. He may proclaim
4 his innocence to the end. He may ask for forgiveness. You
5 never know.

6 And at some point the warden would signal
7 the executioner. The drugs would be started. His heart and
8 lungs would shut down and he would lose consciousness and
9 fall into a deep sleep and ultimately die.

10 I go into those details not necessarily
11 to be morbid with you, but those are the type details that
12 are routinely reported in the press. If you served on a
13 death penalty jury, those are the type things you may hear,
14 you know, about this case one day in the future.

15 And, you know, very frankly, we know not
16 everybody is cut out for that, again. So I guess it comes
17 down to you. You know yourself better than anybody. In
18 your heart of hearts you said it may weigh on you. I know
19 it's not something that you want to take part in, but if
20 called to do it, do you think it's something that you could
21 do?

22 A. Yeah, I think I could.

23 Q. Do you think the potential on down the line,
24 hearing those details like I talked to you about, do you
25 think that may enter into your decision in the courtroom?

1 A. No.

2 Q. What we require of our jurors is just to base
3 their decision on what they hear in the courtroom. Based on
4 the facts and the evidence, you decide whether to find him
5 guilty of capital murder. Based on the facts and evidence
6 in the second part of the trial is how you answer those
7 three questions. And we let the answers to these three
8 questions determine the appropriate sentence.

9 So, like I said, we don't want somebody
10 over in the jury box that's got anything else going on, any
11 other issues other than just listening to the facts and
12 evidence and making the appropriate decision in a case.
13 Sounds like that's something you think you can do; is that
14 right?

15 A. Yes.

16 Q. Okay. Like almost everybody else we've talked
17 to, you mentioned that you have heard something about this
18 case?

19 A. Yes.

20 Q. Okay. And, like I said, everybody in these
21 type of high profile cases has heard something. Do you
22 remember exactly what you have heard or what do you know
23 about this case?

24 A. I know what was reported in the paper,
25 Christmas Eve, Oshman's.

1 Q. Do you remember any of the details?

2 A. Texas Seven or something like that.

3 Q. Uh-huh. Any of the details of the crime or
4 the capture?

5 A. I remember they captured them in Colorado or
6 something like that. And I'm -- the details are fairly
7 sketchy, but I remember pretty much what happened.

8 Q. Have you followed any of the other trials that
9 may have gone on in this case?

10 A. No, I haven't followed them. I have read
11 about a few of them in the paper, but not all of them.

12 Q. Are you aware of any of the other verdicts in
13 these cases?

14 A. Yes.

15 Q. Okay. Do you remember which particular -- do
16 you remember a name or anything?

17 A. I don't remember any names.

18 Q. Knowing that, how do you think it might affect
19 you, if you were a juror?

20 A. I don't think that would affect me.

21 Q. Okay. Again, kind of coming back to what we
22 already talked about, the law contemplates that a jury just
23 make up their mind on what they hear in the courtroom. What
24 you may have heard, what you may know, you are going to have
25 to kind of put it out of your mind and just base your

1 verdict on the facts that you hear in the courtroom.

2 Sounds like that shouldn't be a problem
3 for you. You would be able to do that?

4 A. No, it wouldn't be a problem.

5 Q. Do me a favor real quick. I know you have
6 looked at the law that we have given you, but if you would,
7 read three questions or the three Special Issues up on the
8 wall. They are phrased a little differently than they are
9 in your pamphlet. Take a minute and look over those.

10 A. (Prospective juror complies.)

11 Q. Again, those are the three questions that we
12 get to in the second phase of the trial to determine the
13 sentence. Just to back up, all trials in Texas are
14 basically two-part processes. The first part, we call it
15 the guilt/innocence phase. The jury is just concerned there
16 with whether the person actually committed capital murder,
17 whether they are guilty of the crime. You would hear facts
18 just basically or usually about the crime itself to
19 determine whether we've proven to you beyond a reasonable
20 doubt that the defendant's actually guilty of capital
21 murder.

22 If the person is found guilty of capital
23 murder, then we move into that second phase, the punishment
24 phase of trial. The rules of evidence kind of expand or
25 broaden out and you get to hear more about the person,

1 whether he has a criminal history, whether he doesn't, about
2 his background, character, reputation, maybe, that type of
3 thing.

4 And with that extra information we ask
5 the jury to go through and look at these three questions and
6 answer the questions. Looking with me on Special Issue No.
7 1, you can see it says there's a probability that the
8 defendant could commit criminal acts of violence that would
9 constitute a continuing threat. You see how that's kind of
10 asking the juror to make a prediction about future behavior
11 or future events?

12 A. Yes.

13 Q. Asking you to look in the future. Is that
14 something that you think you can do?

15 A. I think it would be hard to do.

16 Q. Why do you think that?

17 A. It's pretty hard to determine what somebody
18 might do in the future.

19 Q. Okay. Would you be comfortable, you know,
20 looking at the crime maybe that you convicted them of and
21 maybe some extra information in maybe answering that
22 question?

23 A. I'm sorry, I don't understand.

24 Q. Do you think it's something that you could do
25 if you went back and looked at the crime they had been

1 convicted of and looked at this added information that you
2 may hear in the second phase of the trial? Is it something
3 that you think you could possibly reach an answer on that
4 first question?

5 A. Yes.

6 Q. What would be important to you to answer
7 something like that?

8 A. It would just depend on the testimony.

9 Q. Would you think the defendant's background,
10 the person charged, their criminal history, maybe, would
11 that be important to you?

12 A. I think it would.

13 Q. Why do you say that?

14 A. Well, they would have a history of crime. I'm
15 kind of confused on what you are asking me here.

16 Q. I want to make sure -- we talk to a lot of
17 people and some people are just flat uncomfortable about
18 making a prediction about future behavior, say there's not
19 enough information, the type of information, I need. I just
20 can't look into a crystal ball into the future and make a
21 prediction about what another person may or may not do. And
22 I want to make sure that you are, again, probably a bad
23 word, comfortable, but you feel that you could make that
24 prediction, if you were given enough information?

25 A. Yeah, I think I could.

1 Q. Okay. Looking again at that question, it
2 talks in terms of probability. These words aren't
3 necessarily defined or they are not defined legally. We
4 kind of leave it up to the jurors to put their common sense
5 and interpretation on it. But what does "probability" mean
6 to you when you look at that word?

7 A. Possibility.

8 Q. Okay. And the law basically talks in terms of
9 probability being more likely than not. It's not a high
10 probability. We don't have to prove to you it's going to
11 happen again. Just that, I guess, it's more likely than not
12 or a little bit more than a possibility. Does that make
13 sense to you?

14 A. Yeah, it does, yes.

15 Q. Okay. You know, if you put it on a scale,
16 maybe 51 percent of the evidence leans that way. Something
17 is more likely than not to happen. Also it talks about
18 criminal acts of violence. That's not necessarily defined
19 for jurors. Okay? I'm kind of curious, just off the top of
20 your head, what that means to you, that phrase "criminal
21 acts of violence", what type of things come into your head?

22 A. Just hurting someone when you were committing
23 a robbery or something.

24 Q. Again, the law doesn't necessarily define it.
25 It can be anything you think it is or the jury thinks,

1 Threats, assaults, robberies. I guess the bottom line from
2 my perspective is we don't have to prove to you that he may
3 cause another death, that he murder or he may commit another
4 capital murder. It's not that high of a burden. Does that
5 make sense to you?

6 A. Yes.

7 Q. Okay. Then, finally, the very last word in
8 that question, "society." How would you define that,
9 whether someone is a danger to society, or what pops into
10 your head on that?

11 A. Just someone that sits around and plans on
12 robberies or --

13 Q. When you think about the definition of
14 "society," who that word includes in that question, what do
15 you think of? Obviously, people like us walking around in
16 the free world. I guess my question is, would you also
17 include people behind bars, you know, other prisoners,
18 guards --

19 A. Yeah. I think they are part of society.

20 Q. And that's what the law basically envisions,
21 that you can define that word to include both people not in
22 prison and the prison population and that type of thing.
23 Does that make sense to you?

24 A. Yes.

25 Q. Question No. 1 starts off with a no answer.

1 No. 2 is the same way. The first two are alike in that they
2 both start out with a no answer. That's kind of the default
3 setting or default mode. And it's up to us at this table,
4 the State, to prove to you beyond a reasonable doubt that
5 answer should be yes. Okay? It's our burden to prove to
6 you Special Issue 1 and Special Issue 2.

7 Any questions at all about Special Issue
8 No. 1 before we move on?

9 A. No.

10 Q. Okay. Special Issue 2 talks about kind of
11 what we've already visited about, the scenario where
12 somebody may not actually be the triggerman, the
13 nontriggerman. If they are the triggerman, the question is
14 pretty easy to answer. They actually caused the death.

15 The question also terms, it talks about
16 intending to kill the deceased or another, maybe like a
17 murder for hire type deal. You hire somebody to kill your
18 spouse or hire somebody to kill your business partner.

19 And, finally, that last line on Special
20 Issue No. 2, anticipated that a human life would be taken.
21 And if you will recall, when we talked about it a few
22 minutes ago, in order to convict someone of capital murder,
23 you have to find that they should have anticipated that a
24 life would be taken.

25 Going back to our example, you would have

1 to say that I should have anticipated that Mr. Shook would
2 have taken a life in that bank robbery. By the time we get
3 down to punishment, because we're talking about the death
4 penalty, the law imposes a little bit higher burden that
5 says did the person really, did they actually anticipate a
6 human life would be taken? So it's a little bit higher
7 burden before we move along in the process. Does that make
8 sense to you?

9 A. Yes.

10 Q. Again, the question starts off with a no.
11 It's up to us to prove it to you beyond a reasonable doubt
12 that the answer should be yes. If you find somebody guilty
13 of capital murder, answer question 1 yes and question 2 yes,
14 then you have got that final question, Special Issue No. 3.

15 Neither side has the burden on this.
16 It's just answered how the jury feels is appropriate. It
17 asks you to kind of look back at all the evidence, the
18 circumstances of the crime, what you may know about the
19 defendant, his background, and his kind of personal moral
20 blame that he bears for the crime.

21 And it asks if there is anything
22 mitigating. By mitigating, that means, you know, anything
23 that may lessen his personal blame or blameworthiness for
24 the crime. And we ask a jury to look at that and if you
25 find something like that, is it sufficient that his life

1 ought to be spared? Okay? Such that he should get a life
2 sentence as opposed to a death sentence.

3 Does that make sense to you? It's kind
4 of the last stop in the process.

5 A. Yes.

6 Q. The last check or safety valve. As you sit
7 there today, is there anything in these types of cases that
8 may strike you as being potentially mitigating?

9 A. They would have to prove it to me.

10 Q. Okay. I didn't hear?

11 A. I would have to hear the testimony and I, just
12 off my head, I can't think of anything.

13 Q. That's commonly what we hear. I hope people
14 don't sit around thinking about mitigation in a death
15 penalty case. But some people tell us that, you know, if
16 the person was younger, that may be potentially mitigating,
17 because they haven't had much life experience. Other people
18 tell us, no, if you are old enough to do this type of crime
19 and be tried as an adult, you are old enough to know right
20 from wrong, that type of thing. What do you think about
21 that?

22 A. I think if you are old enough to do the crime,
23 you are old enough to know right from wrong.

24 Q. People tell us maybe how the person was
25 raised, you know, was there some early on well documented

1 history of some type of abuse, physical and mental abuse, in
2 their upbringing. That may be potentially mitigating.

3 Others feel it's not. Where do you come down on that?

4 A. I don't think it would be.

5 Q. Drugs and alcohol. Some people tell us if the
6 person is high or drunk or an alcoholic or drug addict, that
7 potentially may be mitigating. Other people say, no, you
8 know, you do that voluntarily. It's not an excuse. It's
9 not mitigating. Where do you come down on that?

10 A. I don't think that is.

11 Q. Again, the law doesn't define what mitigation
12 is or what -- it doesn't require you to consider any
13 particular factor or fact as mitigating. We just leave it
14 up to the jury. You don't even have to agree with the other
15 jurors what's mitigation. The law just requires that you
16 keep an open mind to mitigation and if you hear something
17 that you think is mitigating, you can keep an open mind,
18 look at it, and come up with the appropriate answer to that
19 question. Does that make sense to you?

20 A. Yes.

21 Q. Okay. Does that seem like something you could
22 do? You can follow that law and keep an open mind?

23 A. Yes.

24 Q. Okay. Again, one thing to point out about all
25 this, and that's kind of the bottom line with the law when

1 we get to the second phase of the trial is that you start
2 that punishment phase with an open mind. You know, some
3 people tell us, hey, if I found somebody guilty of capital
4 murder, I'm automatically going to always answer Special
5 Issue No. 1 yes. And they say, if I have found them guilty
6 as a capital murderer, I'm always going to feel that he's a
7 probability to commit that future act of violence. You
8 know, the fact that I found him guilty necessarily or
9 automatically answers that question.

10 And a lot of people feel that way.
11 There's a certain common sense to it. But what the law says
12 is just because you found somebody guilty of capital murder,
13 that doesn't automatically answer those questions for you.
14 You still have to start that second phase with the open
15 mind, and, you know, because you may hear additional
16 evidence.

17 Is that something that you think you can
18 do, even knowing you found somebody guilty of capital
19 murder? Do you think that you can start off and keep an
20 open mind to those questions?

21 A. Yes.

22 Q. Okay. Let's talk a little bit about some of
23 the rules that apply. I know you have been a juror before
24 on a civil case, but there are certain kinds of basic things
25 that apply in a criminal case. You probably are familiar

1 with them. For instance, like the Fifth Amendment. A
2 person that's charged with a crime has an absolute right not
3 to testify in their own defense. No one can force a
4 defendant to take the stand. Conversely, no one can keep
5 the defendant off the stand, if he chooses to testify.

6 But if he doesn't testify, the law is and
7 the Judge will instruct you, that you can't consider that in
8 your deliberations. It's just basically a nonfactor. You
9 can't hold that against him in any way. Does that make
10 sense to you?

11 A. Yes.

12 Q. Is that something that you feel -- a law you
13 feel that you can follow, that type of thing?

14 A. Yes.

15 Q. Okay. The law also starts out every criminal
16 defendant with the presumption of innocence. As we sit here
17 right now, Mr. Murphy is presumed innocent. For whatever
18 reason the trial stopped now, he would be found not guilty.
19 He would be found innocent. That only goes away when the
20 State has proven it to you beyond a reasonable doubt. And
21 everybody starts off with that presumption of innocence.
22 Does that make sense to you?

23 A. Yes.

24 Q. It's really another way of holding us to our
25 burden of proof because we always have the burden of proof.

1 It's up to us to prove to you that he's guilty of capital
2 murder beyond a reasonable doubt. And in this case we also
3 have to prove the answers to Special Issues 1 and 2 should
4 be yes, and that's our burden. This side never has a burden
5 in any criminal case. Does that make sense to you?

6 A. Yes.

7 Q. You can't ask them to prove something. As
8 part of our burden of proof, you know, you probably looked
9 at the indictment. I think it's on the last, the back page,
10 the last page of your booklet. That's basically what we
11 have alleged in this case. We have alleged capital murder
12 as being committed two different ways, murder in the course
13 of a robbery, an intentional murder in the course of a
14 robbery, and also the murder of a police officer in the
15 course of his duty.

16 If we prove one or both of those to
17 you, we prove all the elements of the crime, the law would
18 require you to find the person guilty. But the law requires
19 that we prove each and every element to you. We can't go
20 nine for ten or eight for ten. You know, we don't get
21 partial credit. The jury can't help us out. We have to
22 prove each and every element, whether it's the county the
23 crime happened in, if it's the particular manner and means
24 of death, no one element is any more important than the
25 other. We have to prove them all to you. Does that make

1 sense?

2 A. Yes.

3 Q. Do you think if we failed to prove to you one
4 element, that you could follow the law and find the
5 defendant not guilty?

6 A. Yes, I do.

7 Q. Okay. I think you mentioned in your
8 questionnaire that you may be friends to some police
9 officers or known some police officers; is that right?

10 A. I've known some.

11 Q. Obviously in this case, we've alleged a police
12 officer has been killed. We can't preview the case to you
13 or get into the evidence, but I think it's a safe assumption
14 that police officers are going to testify in this case.

15 What the law says is that you have to
16 start every witness, whether it be a police officer or
17 psychiatrist or psychologist, you have to start them out at
18 the same level of credibility. You can't give them a leg up
19 just because of who they are or conversely you can't be
20 closeminded to them before you hear a word out of their
21 mouth because of who they are or what they do. You have to
22 listen to them and see if they make sense, that type of
23 thing. Does that sound like something you can do?

24 A. Yes.

25 Q. Okay. We've talked about, you know, the two

1 options of sentencing for capital murder. There's the death
2 sentence or the life sentence, if the questions aren't
3 answered yes, yes, and no. What a life sentence means in a
4 capital case in Texas is that the person has to serve forty
5 years, forty calendar years, day for day, before they become
6 eligible for parole. They may make parole the first time up
7 after their forty years or they may not. They may serve an
8 actual life sentence, a hard life sentence.

9 The law tells you that and then the law
10 tells you not to consider it. It says you have to presume
11 that a life sentence really means a life sentence because no
12 one in this courtroom really has control over whether they
13 make parole at forty or actually serve a full life sentence.

14 So we ask the jurors to assume and
15 presume that life means life in these type cases. Is that
16 something that you think you can do?

17 A. Yes.

18 Q. Okay. Do you have any questions about
19 anything we've talked about?

20 A. No.

21 Q. Okay. Does the scheme we have in Texas kind
22 of make sense to you?

23 A. Yes.

24 Q. Okay. And no hesitations or concerns about
25 potentially being over there in the jury box in a case with

1 life or death stakes?

2 A. No.

3 Q. Okay. Only other question I have, Mr. Shook
4 pointed out to me you mentioned in your questionnaire if a
5 job came open, you may be moving out of the county at some
6 point. I don't know if that is still a consideration or
7 concern.

8 A. Yeah, I would, if I got the job I've been
9 waiting on.

10 Q. Okay. Is that something that you think might
11 come through in the next few months?

12 A. I don't think it will start until January.

13 Q. So as far as you know, you would still be a
14 Dallas County resident -- even if you got the job, you would
15 still be a Dallas County resident in November?

16 A. No -- yeah, the job is not supposed to open
17 until January.

18 Q. Mr. Hulsey, thank you for your time this
19 morning.

20 MR. WIRSKYE: That's all I have, Judge.

21 THE COURT: Ms. Busbee?

22 CROSS-EXAMINATION

23 BY MS. BUSBEE:

24 Q. Thank you, Mr. Hulsey. So when we gave you
25 this questionnaire to fill out, we didn't tell you how it

1 worked in reality and then we get you down here and start
2 talking to you about things. But I think it's clear -- it
3 becomes clear to me that people naturally hear the words
4 "capital murder" and think that we're talking about the
5 death penalty.

6 But I think you understand now there's
7 two different things. Capital murder is an automatic life
8 sentence. You understand that?

9 A. Uh-huh.

10 Q. I feel that way, too. It's early in the
11 morning. But you have to say yes or no so she can put that
12 down. She can't put -- execute an expression.

13 A. I understand it now.

14 Q. So automatically when the State is seeking the
15 death penalty, I don't think anybody has any problem with
16 saying a person who is a party to an offense is guilty of
17 that exactly as the person who pulled the trigger because
18 that's -- that's our law in all cases in Texas. And I'm
19 assuming you don't have a problem with that?

20 A. No.

21 Q. Okay. So assuming that you are sitting on a
22 hypothetical capital murder case in which the State is
23 seeking the death penalty, you would have already found
24 somebody guilty of the offense of capital murder before we
25 get to these Special Issues.

1 And I like to put it a different way.
2 The law assumes or the law favors a life sentence in a
3 capital murder case. So in order to get a death penalty
4 sentence, the State has to do some things, establish some
5 things to the jury beyond a reasonable doubt, before that
6 can be accomplished.

7 So Special Issue No. 1, the question
8 about the probability a person would commit a criminal act
9 of violence in the future, is something that is decided anew
10 by the jury and decided beyond a reasonable doubt. Do you
11 think having decided that a person is guilty of the offense
12 of capital murder beyond a reasonable doubt, that you would
13 automatically answer Special Issue No. 1 yes?

14 A. Yes, I would.

15 Q. Okay. And that's because someone who has
16 committed a capital murder is somebody you won't take a risk
17 on, I'm guessing, because that's what some people say?

18 A. I wouldn't, yes, you're right.

19 Q. And that doesn't mean -- I want to reassure
20 you about this. You assumed we were going to talk about
21 everyone. I'm thinking you are about the 28th or 29th
22 person we've talked to and your juror number is 957. So
23 that kind of tells you how we winnow out people. And we're
24 only talking with people who had intelligent and thoughtful
25 questionnaires that we thought might sit on our jury.

1 But we also called people down that we
2 felt would tell us the truth about how they felt about
3 things. So no problem saying that you can't follow the
4 tortured statutory scheme we have. The only problem would
5 be is if you didn't tell us so.

6 So having said that, I guess my question
7 is, on Special Issue No. 1, it wouldn't matter what you
8 heard in the case, it wouldn't matter. You would say the
9 defendant was a future danger based on the fact that he had
10 been guilty of the capital murder. Is that what you are
11 telling us?

12 A. Yes.

13 Q. Okay. And in order to answer that question
14 no, would you need to hear something from us to disprove
15 that fact? Would it require --

16 A. No, I don't think so.

17 Q. It would just automatically be answered yes?

18 A. You are confusing me here a little bit.

19 Q. That's what I'm afraid of. I don't want to
20 confuse you, but I want to hear your real feelings and I
21 don't want to suggest an answer.

22 A. I would think that if somebody has committed a
23 violent crime, there's a possibility they are going to do it
24 again. I think there's a possibility that anybody in here
25 could do that again.

1 Q. Okay. There's a possibility that Mr. Wirskye
2 is going to go crazy and commit a crime, but we're getting
3 words mixed up. It's probability. So that means it's a
4 little stronger than possibility. So tell me your thoughts
5 on that.

6 A. If I felt somebody was guilty, I would
7 definitely think there's a probability that they would do it
8 again.

9 Q. So the State wouldn't have to prove to you
10 anything else other than the fact that you already decided
11 that the person committed the offense of capital murder?

12 A. The State would have to prove to me that they
13 did.

14 Q. The capital murder?

15 A. Yes.

16 Q. And having decided that, it's clear to you
17 that Special Issue No. 1 would be answered yes?

18 A. Yes, it would.

19 Q. Okay.

20 THE COURT: Mr. Hulsey, I'm going to try
21 to wade in, in the middle of the lawyers. You say you were
22 confused. Your answer to Mr. Wirskye when he asked you, do
23 you think that you can look in the future and answer this
24 question, you said that would be real hard.

25 PROSPECTIVE JUROR: Uh-huh.

1 THE COURT: And you can try to -- what
2 Ms. Busbee is saying, in a hypothetical case, if the jury
3 has found someone guilty of capital murder, you put that
4 part of the trial behind you. Then you have a punishment
5 hearing which is a lot more evidence that comes after you
6 have found someone guilty. You find someone not guilty,
7 it's completely different.

8 But on the second part of the trial, it's
9 answering these three questions. The State has the burden
10 to prove to you whether or not there is a probability that
11 the defendant, this defendant, would commit criminal acts of
12 violence that would constitute a continuing threat to
13 society. And the law is written such that you have to go
14 into that beginning of the punishment trial with the answer
15 no. The law says we start with the answer is no. The State
16 has to prove to you beyond a reasonable doubt that he is a
17 -- or there is a probability. Probability means more than
18 possible. Because it's possible, like she said, Wirsky
19 could go off today and commit a crime.

20 Probable, we don't have a definition for
21 it, but the lawyers have agreed it's more likely than not,
22 is a good base definition. So it asks you to look in the
23 future about this defendant, if he were found guilty, taking
24 all the evidence you hear. So it starts off no. If the
25 State convinces you beyond a reasonable doubt, then you

1 would answer the question yes.

2 Ms. Busbee's question is, and this is
3 perfectly fine, don't make me change your opinion. But some
4 people say, yes, Judge, if I found somebody guilty of
5 capital murder, I don't need any more evidence. I'm going
6 to always answer this question yes.

7 Have I cleaned that up for you somewhat
8 or made it worse?

9 PROSPECTIVE JUROR: I just don't
10 understand the procedure on that.

11 THE COURT: All right. We're going to
12 try it again. The law states that this question starts off
13 with a no answer. She said it perfectly. Our capital
14 sentencing scheme is predisposed to a life sentence. If
15 someone is found guilty of capital murder in the State of
16 Texas, they're guaranteed a life sentence. There's only two
17 options for sentencing in a capital murder, a life sentence
18 or a death sentence, regardless of what the crime is,
19 underlying facts. It's capital murder is equal to a life
20 sentence or death sentence. It's predisposed to a life
21 sentence, which means if the State doesn't put any more
22 evidence on, then it's a life sentence.

23 In this case they are choosing to put
24 more evidence on. If they obtain a capital murder verdict,
25 then the jury is asked to answer these questions. These

1 questions start off as a no. And unless the State convinces
2 you beyond a reasonable doubt, that question will remain no
3 and he will be sentenced to life in prison.

4 If the evidence that the State presents
5 convinces you beyond a reasonable doubt that that question
6 should be answered yes, then you go to question No. 2. Does
7 that help any?

8 PROSPECTIVE JUROR: It helps some.

9 THE COURT: Some. So predisposed to a
10 life sentence, unless the State chooses to go through this
11 process. Her question is, being fair to Mr. Murphy, is your
12 answer to Special Issue No. 1 going to be yes, simply
13 because you found him guilty of capital murder?

14 PROSPECTIVE JUROR: Okay. I think I
15 could still listen to what was said.

16 THE COURT: And if you didn't believe the
17 State proved their case, what would your answer be to
18 Special Issue No. 1?

19 PROSPECTIVE JUROR: If they didn't prove
20 it?

21 THE COURT: Did not prove it.

22 PROSPECTIVE JUROR: That there's not a
23 probability?

24 THE COURT: And your answer would be?

25 PROSPECTIVE JUROR: Would be no.

1 THE COURT: Ms. Busbee?

2 MS. BUSBEE: May we approach, Your Honor?

3 THE COURT: Sure.

4 (Bench conference)

5 THE COURT: Mr. Hulsey, I want to thank
6 you for your time this morning to the Court. The lawyers
7 have agreed that when you get three different shots at you
8 on three different angles, sometimes we get people so
9 confused that they aren't real clear about what we're doing
10 here and the parties have agreed to excuse you from this
11 case. Thank you, sir.

12 [Prospective juror out]

13 THE COURT: Raymond Capetillo.

14 [Prospective juror in]

15 THE COURT: Good morning, sir, how are
16 you?

17 PROSPECTIVE JUROR: Pretty good, sir.

18 THE COURT: Raymond Capetillo, is that
19 close?

20 PROSPECTIVE JUROR: Yes. That's close
21 enough.

22 THE COURT: Thank you for being here
23 first thing Monday morning. Have you had an opportunity to
24 read a couple of times the guide that I provided for you?

25 PROSPECTIVE JUROR: Yes.

1 THE COURT: Did you have an opportunity
2 to look over your questionnaire?

3 PROSPECTIVE JUROR: Yes.

4 THE COURT: The objective this morning is
5 the attorneys are going to try to explain the law to you and
6 then after explaining the law, do you understand it? That's
7 my main job is to be sure that you understand the law. Once
8 you understand the law, the next question is, can you follow
9 the law? And this law is complicated. You are not supposed
10 to be able to figure it out before you walk in the door.
11 That's what this time is going to be is to work through it
12 and give you examples so you can understand it.

13 PROSPECTIVE JUROR: Okay.

14 THE COURT: Please, if you don't
15 understand the question or if you don't understand the
16 concept, just say, can you explain it a different way? Many
17 people think you are on trial because you are sitting in the
18 witness stand. Okay? This is as informal a process as we
19 can have in this matter. Please try to relax. And there
20 are no wrong answers, just truthful answers.

21 The only question that I have for you,
22 sir, is will you be able to serve this Court for two weeks
23 beginning on November 10th?

24 PROSPECTIVE JUROR: I should be able to,
25 yes.

1 THE COURT: Mr. Shook, would you like to
2 inquire?

3 MR. SHOOK: Yes, Judge, thank you.

4 RAYMOND CAPETILLO,
5 having been duly sworn, was examined and testified as
6 follows:

7 DIRECT EXAMINATION

8 BY MR. SHOOK:

9 Q. Mr. Capetillo, my name is Toby Shook. I'll
10 ask you questions on behalf of the State this morning. If
11 you have any questions at any time, feel free to ask. Okay?

12 A. Okay.

13 Q. There's not any right or wrong answers to any
14 of our questions. We're looking for your truthful opinions.
15 You've been very honest in your questionnaire. We just want
16 to continue on with that. I'll follow up with a few
17 questions on the questionnaire, also ask you about capital
18 murder, the death penalty, some of the laws that apply, and
19 how you feel about those.

20 A. Okay.

21 Q. As the Judge said, the trial will begin
22 November 10th. We feel that it will last two weeks. And
23 the Judge keeps very regular hours, 9:00 to 5:00 type hours,
24 regular business hours. That would not be a problem if you
25 were placed on the jury for that length of time?

1 A. It shouldn't be, no, sir.

2 Q. Okay. Have you been on a jury before?

3 A. No, sir.

4 Q. All right. The only person I think we always
5 -- we ask if you have known anyone that's been involved in
6 the criminal justice system and you knew a person by the
7 name of Steve Herrera, who was the -- I believe he was the
8 husband of --

9 A. Husband of my niece, my niece, yes, by
10 marriage.

11 Q. Do you know him very well? Were you very
12 close to him?

13 A. No, sir.

14 Q. Okay. And then he went to prison on some type
15 of drug sale; is that right?

16 A. From what I understand, because, like I say, I
17 don't know all the particulars because we're not that close.

18 Q. I take it from that, then, nothing from that
19 experience or anything you know about it would cause you to
20 be unfair as a juror in this case, would it?

21 A. I wouldn't think so, no, sir.

22 Q. You think he was treated fairly from what you
23 do know about the case?

24 A. From what I know, yes.

25 Q. Okay. Let me ask you, then, you know that

1 this is a death penalty case, one which the State is seeking
2 the death penalty?

3 A. Yes.

4 Q. We want to ask every juror how they personally
5 feel about the death penalty as a law. Are you in favor of
6 the death penalty as a law?

7 A. I'm in favor if the crime that was committed
8 -- I'm saying in my own mind the guy deserved or the person
9 deserved the death penalty, I would have to really be aware
10 of the circumstances to really be able to say, yes, I want
11 the death penalty.

12 Q. What purpose do you think the death penalty
13 serves in society?

14 A. Well, in my opinion, like I say, the way the
15 crime rate is nowadays, we need to deter to keep the crime
16 down, you know. And if the way the things -- the way
17 society is going nowadays, I think that we do need the death
18 penalty.

19 Q. All right. Have you always been in favor of
20 the death penalty as a law from, I guess, a philosophical
21 point of view, something you think we should have on the
22 books?

23 A. Well, no, sir. In my younger days, I didn't
24 believe in the death penalty because, like I said, I was
25 just -- I hadn't really given it much thought until I

1 started having a family of my own and then I looked at it
2 more closely.

3 Q. And once you had a family of your own and your
4 family grew, that's when you started thinking about it more?

5 A. Yes.

6 Q. What types of crimes do you think could be
7 appropriate for the death penalty?

8 A. Well, like I said, murder, rape, child abuse,
9 something of that nature.

10 Q. All right. Have you followed any crimes in
11 the news, local or national media, TV, or newspapers, cases
12 that you thought were cases appropriate for the death
13 penalty or cases at least deserving of it?

14 A. The only thing that really catches my
15 attention, say, like if the news media picks it up and I
16 watch the news and if it happens to catch my eye on the
17 news, and then that's when I start paying attention. But
18 other than as far as reading on it, I don't do that.

19 Q. But you don't recall any cases by name right
20 now or anything?

21 A. The only one that really caught my attention
22 is back when the O. J. Simpson was -- that was the only
23 thing.

24 Q. I don't think you could have gotten away from
25 that. And your opinion on that from everything that you saw

1 or read, that he was guilty?

2 A. I felt that he was guilty, yes.

3 Q. Now, there's a lot of publicity involved in
4 this particular crime. We can't go into the facts, but we
5 could tell you from the questionnaire and what the Judge
6 told you that this crime occurred at the Oshman's on
7 Christmas Eve back in 2000. It got a whole lot of publicity
8 back then, so almost every juror we know or talk to or
9 filled out a questionnaire said that, yes, they have read or
10 heard something about the case. And you said that you had
11 heard about it on the TV and radio and newspaper.

12 What is it you recall you heard about the
13 case?

14 A. Well, like I said, it was just that the
15 officer had been shot and it was one police officer by
16 himself and it was sort of like a gang-style execution and
17 that's what really caught my attention.

18 Q. Did you follow the capture or any of the
19 subsequent proceedings or anything like that?

20 A. I kept up to see when they escaped and, you
21 know, how they were looking for them and when they finally
22 caught them and so forth.

23 Q. As I said before, almost every juror has read
24 or seen something on the news regarding this case. And the
25 fact that you have doesn't make you unfit to be a juror.

1 But the law is this, if you have read or heard something
2 about it, you can't use that as evidence in the case. You
3 have to make your decision just based on what you hear from
4 the witnesses on the witness stand. You can't let any
5 opinions you have formed ahead influence you in any way.

6 Most jurors can do that. Some tell us
7 honestly they can't because they have read so much and
8 followed it so closely that they did have an opinion one way
9 or the other. Most can follow the law.

10 We just need to ask you this. Can you
11 follow that particular law and just make your decisions, if
12 you were seated as a juror, on what you heard in the
13 courtroom?

14 A. Well, the way I feel right now is from what
15 I've followed, the trial and everything, what I have read
16 and what I have heard, you know, I've sort of formed my own
17 opinion. But I think that I could listen to somebody else
18 and might change my opinion. But at this point in my own
19 mind I just have a feeling of how I feel.

20 Q. Okay. And that's kind of what I want to get
21 down to. You have formed some opinions based on what you
22 read and heard and what you followed; is that right?

23 A. Yes, sir.

24 Q. And what opinion is that?

25 A. I feel that the man is guilty and I feel that

1 --
2 Q. Do you feel that would influence you in your
3 decision or could you wait and listen to the evidence and
4 ignore that opinion and then just make that decision on what
5 you hear in the courtroom or is it something that's going to
6 influence you?

7 A. Right now I really don't -- I don't know how
8 to answer that, because I don't know. Like I say, right now
9 in my own mind I know how I feel and I would have to -- I
10 don't know if I could just -- somebody would sway me or
11 persuade me.

12 Q. Are you saying, then, that you have that
13 opinion and it's going to take something to change your mind
14 from it?

15 A. Something really drastic to change my mind.

16 THE COURT: Mr. Capetillo, we greatly
17 appreciate your honesty. Probably the worst thing that you
18 can possibly do is come in and not be honest with your
19 opinions. It's not fair to Mr. Murphy to have a juror who
20 comes in with the opinion, I think he's guilty before I've
21 heard any evidence. And it takes a really honest, decent
22 human being to come in and say that and we appreciate it.

23 PROSPECTIVE JUROR: That's what you asked
24 for is honesty and that's what I'm being.

25 THE COURT: And there are a lot of people

1 up here that would shade that question and not be totally
2 honest with us and that's not right, because you would not
3 want to be judged by somebody who had already thought you
4 were guilty before they heard the case.

5 PROSPECTIVE JUROR: Right.

6 THE COURT: And that's the problem with
7 the high profile case. So the parties have agreed to excuse
8 you, so this is not your case. Hopefully we can catch you
9 for another one because I would like to have you on anything
10 else in this courtroom, but not this one.

11 PROSPECTIVE JUROR: Okay.

12 THE COURT: All right?

13 PROSPECTIVE JUROR: All right.

14 THE COURT: They have excused you and you
15 are free to go.

16 PROSPECTIVE JUROR: Thank you, sir.

17 THE COURT: Thank you.

18 [Prospective juror out]

19 THE COURT: Ms. Rehwinkel.

20 [Prospective juror in]

21 THE COURT: Good morning. How are you?

22 PROSPECTIVE JUROR: Fine.

23 THE COURT: Margaret Rehwinkel.

24 PROSPECTIVE JUROR: Rehwinkel, right.

25 THE COURT: Glad to have you in the 283rd

1 this morning, Monday morning. First thing, get down here
2 and fight traffic.

3 PROSPECTIVE JUROR: I work five minutes
4 from here.

5 THE COURT: You do? Where do you work?

6 PROSPECTIVE JUROR: David Gilbert and
7 Associates in the design district.

8 THE COURT: So you know this area real
9 well?

10 PROSPECTIVE JUROR: Very well.

11 THE COURT: It's still Monday morning.

12 PROSPECTIVE JUROR: Yes. I know, and I
13 was out of town this week and so I'm a little tired. I got
14 in late last night.

15 THE COURT: Did you have one eye open
16 this morning to read the orientation guide?

17 PROSPECTIVE JUROR: Uh-huh.

18 THE COURT: And that's a lot of law to
19 give someone first thing in the morning and you are not
20 expected to understand it all. That's why the attorneys are
21 going to visit with you on how the law really works and
22 interrelates. They will give you examples, I anticipate.

23 The questions that I have for you at the
24 end of the process, do you understand the law?

25 PROSPECTIVE JUROR: Yes.

1 THE COURT: And then the second question
2 is, if you understand the law, can you follow it?

3 PROSPECTIVE JUROR: Uh-huh.

4 THE COURT: That's what we're going to
5 answer in about an hour from now. So we appreciate at this
6 point -- people look at that and they are going to ask you
7 questions about it and go over your --

8 PROSPECTIVE JUROR: I think I do, just
9 reading.

10 THE COURT: Sure. It's one of those
11 deals like you think, you know, you are ready for that test
12 and then they give you the test and where did that come
13 from? So they are going to give you some examples to help
14 you go through the process.

15 The only question that I have for you
16 right now from the Court is, will you be available to serve
17 this Court for two weeks beginning on November 10th?

18 PROSPECTIVE JUROR: I can. It's a long
19 time, though, for me for my business, being away from it for
20 two weeks. But if there are breaks, my office is five
21 minutes away, so I can always, you know.

22 THE COURT: We work business hours.

23 PROSPECTIVE JUROR: I saw that.

24 THE COURT: You will be able to use a
25 phone and stay in contact with your office during the

1 breaks. And because you are close, you can run by there
2 after the trial is over in the afternoon.

3 PROSPECTIVE JUROR: Right.

4 THE COURT: Wouldn't be able to leave
5 during lunch.

6 PROSPECTIVE JUROR: Okay.

7 THE COURT: But you will be able to use
8 the phone. You won't be cut off or anything like that. So
9 for you it would probably be the most convenient than any
10 juror we have down here.

11 PROSPECTIVE JUROR: Uh-huh.

12 THE COURT: I know business reasons are
13 always a person's concern. Like paying taxes, nobody wants
14 to be involved in this process. It costs people money. But
15 I can't let somebody off for business reasons. We can help
16 you the best we can and work around it, but I can't let you
17 off. Thank you very much. Mr. Shook, you may inquire.

18 MR. SHOOK: May it please the Court.

19 MARGARET REHWINKEL,
20 having been duly sworn, was examined and testified as
21 follows:

22 DIRECT EXAMINATION

23 BY MR. SHOOK:

24 Q. Ms. Rehwinkel, is that right?

25 A. Yes.

1 Q. My name is Toby Shook. I'm going to ask you
2 questions on behalf of the State. We're just looking for
3 your honest opinions. I think you are aware of that?

4 A. Uh-huh.

5 Q. And you are very forthcoming in your
6 questionnaire and we appreciate you taking the time to fill
7 it out. I know it was a lot of information. Believe it or
8 not, it will save you some time.

9 A. Okay.

10 Q. But I'm going to ask some questions, some
11 followup questions, off of that and obviously talk to you
12 about the death penalty, capital murder, and the laws that
13 apply, that sort of thing. Your business is nearby. What
14 do you do?

15 A. The wholesale furniture. I'm in the --
16 wholesale furniture rep. I represent a lot of furniture
17 lines, work with designers, builders, developers, etc.,
18 working hotels, lawyers' offices, hospitals, things like
19 that.

20 Q. All right. And I saw on the questionnaire
21 that we always ask if you know any defense attorneys or
22 prosecutors and you said you know Jim Jacks?

23 A. Jim Jacks.

24 Q. How do you know him?

25 A. His wife is a very good friend of mine and

1 Jim, I've known -- our children are friends. His daughter
2 and my son went to school. And I have several friends that
3 are attorneys.

4 Q. Any of those criminal attorneys that you know
5 of?

6 A. One of the gals that bought my house is a
7 litigator. I don't know her very well. Mike Kenoppick
8 (phonetic), I don't think he is criminal. I don't think any
9 of them are.

10 Q. But your son was friends with Jim Jacks?

11 A. Daughter Molly went to the same and Becky his
12 wife is a good friend of mine.

13 Q. And your son goes to Jesuit and is going to go
14 to Georgetown?

15 A. He went to Jesuit. And I was just at his game
16 in Georgetown this week in Washington, D. C. He's a
17 freshman there, so.

18 Q. Good. That must be pretty exciting.

19 A. It was great. It was their first football
20 game. Unfortunately, they lost by a point, but it went down
21 to the last five seconds. It was a great game, football
22 game.

23 Q. It should be a good experience up there. We
24 enjoy this question. I don't know if it does us a lot of
25 good, but we always ask people to list their three men and

1 women that they most respect and least respect.

2 A. That one was a tough one.

3 Q. You can imagine we get all kinds of responses.

4 A. I'm sure you do.

5 Q. But oftentimes we like to follow up on that.

6 And what I thought interesting about looking at yours again
7 is what's happened the last week or two with Chief Bolton
8 and everything because you had Ted Benevides down.

9 A. Well, see, I've known Ted and Val, his wife,
10 forever. Our children were babies together in preschool and
11 actually his son, Russell, is a senior at Jesuit. And Ted
12 does a great job. I know what he's up against. I mean, I
13 don't talk to them as much as I used to, but --

14 Q. I was going to ask you how he's holding up to
15 all this.

16 A. I haven't talked to his wife. But, you know,
17 it's, hey, anybody in public office, you never can please
18 everybody. So he does a great job, though.

19 Q. You also have Ken Molberg down.

20 A. Yeah, I know him. We were neighbors on Swiss
21 Avenue and he represented my husband, my late husband, in a
22 discrimination case. And his wife, Linda, I know and,
23 again, his daughter and my son are the same age, so --

24 Q. Okay. And then you had Laura Miller?

25 A. Yeah. And I like her, but then I don't like

1 her.

2 Q. You had the old Laura Miller down. I thought
3 that was interesting. Is that when she was with the
4 "Observer"?

5 A. Well, just, there's just things about her,
6 even now there's things about her that I don't care for, but
7 she's doing the best job she can.

8 Q. Mary Poss, do you know her personally?

9 A. Just from Lakewood when I went to Lakewood,
10 different functions. I don't know her personally, but I
11 have always admired her for her beliefs and cleaning up
12 White Rock Lake. And when she ran for mayor, I voted for
13 her. I didn't vote for Laura Miller.

14 Q. Okay. That's interesting. I always like to
15 look at those. Again, I don't know if it gives us any
16 insight, but you would be surprised with what we get on
17 that.

18 A. I'm sure.

19 Q. Let me talk to you a little bit about the
20 death penalty. Obviously, you know from what the Judge has
21 told you and the questionnaire, that the State is seeking
22 the death penalty in this case. So we obviously ask a lot
23 of questions in that area.

24 You put on your questionnaire that you
25 are in favor of the death penalty as a law and I would like

1 you to kind of follow up on that and tell us why you favor
2 the death penalty, maybe the purpose you feel it serves.

3 A. Well, I've always believed in the death
4 penalty and I'm glad Texas is very pro death penalty. I
5 just -- I guess growing up in the suburbs of Chicago for 20
6 some odd years and then moving to Dallas, not enough people
7 are penalized for their crimes. And living in Atlanta,
8 going to college there, just reading in the paper and seeing
9 things that happen, they're not tried enough.

10 But when the death penalty is applied,
11 maybe if more people were put to death or had that
12 capability, states did, then maybe some of the crime issues
13 would -- people would think twice about committing a crime.

14 Q. It might be more of a deterrence?

15 A. Possibly, yeah,

16 Q. Do you feel it's a just punishment, then, for
17 certain crimes?

18 A. Yeah. Actually, I think probably more people
19 should get the death penalty than life imprisonment.

20 Q. What types of crimes come to mind which you
21 think could be justified or at least for consideration?

22 A. Of course, I put down terrorism because that's
23 what everybody is thinking about now. I think child
24 molesters should be penalized. I think people that act
25 intentionally to commit a coldblooded murder should be

1 penalized, calculated murders, things like that.

2 Q. In Texas there's only certain types of cases
3 which are considered for the death penalty. And we follow
4 guidelines which are brought down by the courts, obviously,
5 but each state is a little bit different. In Texas it used
6 to be the death penalty could be administered for murder
7 cases and rape cases and even robbery cases.

8 But now it's limited to murder cases and
9 just specific types of murder cases. It has to be an
10 intentional killing. It can't be legally justified, not
11 self-defense, not an accident. But it also has to have some
12 other aggravating fact. We have a lot of intentional
13 murders which most, a lot of people would say, look, that
14 should be a death penalty case. But because of the -- some
15 of the rules laid down by the Supreme Court, they are not.
16 You get a life sentence.

17 The best example I can think of is
18 Timothy Richardson, the man that murdered his wife in
19 Highland Park.

20 A. Right, University Park.

21 Q. That was a murder case, not a death penalty
22 case. And we have jurors all the time that say that's the
23 kind of case that I think because it was so brutal.

24 A. Exactly, exactly.

25 Q. But the Supreme Court, they wanted to issue

1 some guidelines in that they said you can't make every
2 murder case. There has to be some guidelines. So that's
3 why we have these aggravating factors. They are a murder in
4 the course of a felony, such as robbery. You murder
5 someone. I walk in and pull a gun and murder a 7-Eleven
6 clerk while I'm robbing the store, that could be a death
7 penalty case. Murder during a burglary, breaking into
8 someone's home, kill someone in there, murder during a rape,
9 during a kidnapping, during an arson. These types of cases.

10 Also murder of specific individuals, such
11 as police officers, prison guards, or firemen on duty,
12 murder of a child under the age of six, multiple murders,
13 several victims, like a serial killer or mass murderer, and
14 murder for hire. Someone does it for money.

15 A. Right.

16 Q. But these are the specific types of situations
17 that are reserved for the death penalty. And the law
18 contemplates that not every one of those persons, if they
19 are found guilty, receive the death penalty. It just
20 depends on the facts of that particular case and how these
21 questions are answered.

22 Trials are divided into two portions.
23 There's the guilt/innocence stage where you simply decide
24 has the State proven its indictment. Then there's the
25 punishment phase. If you don't believe the State has, you

1 find the defendant not guilty and we go home. But if you
2 did, the trial is not over. That doesn't mean there's a
3 death sentence because someone is found guilty. You go to
4 the punishment phase. You can hear additional evidence
5 about the person's background and then you get these
6 questions, which we'll go over in a minute.

7 But basically the way the system is laid
8 out is the State has to prove that the defendant is a
9 continuing danger to society, has to prove that they
10 intended the person to die or anticipated that they would
11 die, and that there's no mitigating evidence that would --
12 that the jury feels a life sentence should be imposed rather
13 than a death sentence.

14 But if those questions are answered yes,
15 yes, and no, the Judge would sentence the defendant to
16 death.

17 A. Okay.

18 Q. And if they are answered any other way, he
19 would sentence the defendant to life. These are the two
20 alternatives once someone has been found guilty. Now, are
21 you aware of the method of execution in Texas?

22 A. Um, I think it's lethal and then gas chamber
23 or --

24 Q. Lethal injection now. It used to be the
25 electric chair. They switched in the '70s to lethal

1 injection. You know, I think, from what you have said and
2 what you followed in the news, that Texas is a state that
3 actually prosecutes the death penalty and the penalties are
4 actually carried out.

5 A. Uh-huh.

6 Q. There are some states that, as you have said,
7 have it --

8 A. Right.

9 Q. -- and they never carry it out, which doesn't
10 really do a lot of good. But for some reason they don't.
11 We know here in Texas that if someone is prosecuted for the
12 death penalty, ultimately they are probably going to receive
13 it. Texas leads the nation in executions.

14 And, quite frankly, that's our goal in
15 this case. We, at the State's table, feel we have the type
16 and quality of evidence to convince a jury of the
17 defendant's guilt and that these questions should be
18 answered in a way in which someday would result in his
19 execution by lethal injection. The defense takes the
20 opposite view and that's obviously why we go through this
21 whole scenario, jury selection, and a trial. But ultimately
22 that is our goal in this case.

23 And so I want to talk to every juror
24 about that. It's one thing to talk about it philosophically
25 whether you are in favor of the death penalty or not, and

1 it's quite another when you think, well, I could be on a
2 jury and make the decisions where the man I see in the
3 courtroom someday could be executed.

4 A. Right.

5 Q. So I think once you get down here, obviously,
6 you start thinking about that a little more seriously. How
7 do you feel? We will never know you, obviously, as well as
8 you know yourself. Do you think you are the type of person,
9 if the State proves those issues to you beyond a reasonable
10 doubt, that you could take pen in hand and answer the
11 questions in a way knowing some day the defendant could be
12 executed?

13 A. Uh-huh, yes.

14 Q. Fair enough. When we talk about the death
15 penalty, the first examples we usually conjure up in our
16 minds are the actual triggerman. I walk in the 7-Eleven and
17 murder the clerk, that sort of thing, that's deserving of
18 the death penalty, that sort of thing.

19 But capital murder, like any other crime,
20 can be committed by more than one person. There could be
21 groups of people at some time that commit crimes. The law
22 says if you are actively involved in a crime, even though
23 some people in the crime may be more involved than you, but
24 if you are actively involved, participating, helping commit
25 it, then you can be held responsible for that crime, too,

1 even if you are not the most actively involved.

2 And the same for capital murder. The
3 example I want to give you, say, me and Mr. Wirskye go in to
4 rob a bank and we have another buddy of ours who's going to
5 help us. Our friend is going to stay outside with the car.
6 He's going to keep it running. He's going to yell if the
7 police come and he's going to take off so we can make a
8 quick getaway. We're going to go in. I have two guns.
9 Mr. Wirskye has a big bag.

10 I throw out my guns, threaten the
11 tellers. He starts gathering the money up. That's our
12 plan. Maybe during the course of that I don't like the way
13 one of the tellers looked at me. Maybe Mr. Wirskye says,
14 this one is going for an alarm, and I shoot and kill them.
15 And we get out of there. But we're arrested.

16 Obviously, I could get prosecuted for
17 capital murder and I could receive the death penalty. I'm
18 the triggerman. The law says, though, that Mr. Wirskye, as
19 well as the getaway driver, could also be prosecuted for
20 capital murder, could ultimately get the death penalty,
21 depending on the facts of the particular case, even though
22 they are not the nontriggerman. They could be prosecuted as
23 an accomplice for that particular crime.

24 Some people disagree with that area of
25 the law. They are for the death penalty, but they would

1 reserve it personally only for the triggerman. Other people
2 agree with the law and say, no, you can have the death
3 penalty for an accomplice, too, depending on the particular
4 facts, how actively involved, that sort of thing.

5 But I always want to ask jurors about
6 that, how they feel about that from their gut reaction. Are
7 you in favor --

8 A. It's going to depend on the circumstances.
9 That's how I would say. If they all went in there planning
10 to rob and possibly kill someone is one circumstance. If
11 they were planning on just going in to rob and then you kill
12 someone, you know, you have to kind of analyze the other two
13 people that were involved, if they should --

14 Q. What would be important about those
15 accomplices in your mind in the scenarios I have talked
16 about?

17 A. Um, I guess an accomplice, if they could -- if
18 they were the ones with the guns, would they have shot the
19 man like the first man or not?

20 Q. If you feel from looking at all the facts and
21 circumstances, would they have been capable of doing that or
22 had that intent?

23 A. Uh-huh. Then, again, how are you really going
24 to find out? Are they going to be honest with you?

25 Q. That's another good question, because a lot of

1 people tell us, well, if they all sat down and planned it
2 out and if someone gets in your way, do that. But
3 oftentimes the State, obviously, won't present you with what
4 they planned. We may never know what they planned. We can
5 only draw inferences from the acts or what they did at the
6 crime itself. Reasonable deductions, we call that.

7 A. Yeah, you would have to.

8 Q. Do you feel that you could get enough about a
9 person's intent by analyzing all the facts of the case, what
10 their role in the crime was, how the crime was carried out,
11 how planned out it was, and that sort of thing?

12 A. Yeah, I could, I could.

13 Q. Okay. It would just come down to the facts
14 with you, then?

15 A. Probably the facts, yeah, depending on how
16 many people were involved, just the circumstances, right.

17 Q. Would it matter to you if there were a lot of
18 weapons involved, how planned out the crime was, that sort
19 of thing?

20 A. Sure, that would be real important.

21 Q. Okay. So you would agree, then, that there
22 are certain circumstances in which an accomplice, a
23 nontriggerman, would be found guilty and ultimately receive
24 the death penalty?

25 A. Uh-huh.

1 Q. Depending on --

2 A. Depending on the facts.

3 Q. We can't get into the facts of the case,
4 obviously. We can't preview the facts and say, how are you
5 going to answer the questions? We can tell you that the
6 State of Texas is relying on that law of parties in this
7 case. We're prosecuting Mr. Murphy under that law of
8 parties. You don't have a problem with that, I take it,
9 from a philosophical point of view and you would just have
10 to hear the facts?

11 A. Right.

12 Q. Okay. It works two ways under that law. The
13 first one I talked about, if you are actively involved,
14 help, assist, to commit an offense, you can be found guilty
15 under that legal theory. The other legal theory is very
16 similar. We are call it the law of conspiracy.

17 If two people conspire to commit one
18 crime and one of them commits another one during carrying it
19 out, they all could be responsible. Mr. Wirskye and I agree
20 or conspire to commit bank robbery and in the course of
21 that, I start shooting people. If the particular facts show
22 that he should have anticipated that that could occur, then
23 he can be found guilty. To get the death penalty we have to
24 prove that he did anticipate that would occur and it would
25 just depend on the particular facts.

1 A. Uh-huh.

2 Q. Now, every juror has read or seen something
3 about this case in the paper or in the news, because it was
4 so widely followed back when it happened in 2000 and
5 subsequent to that. But that doesn't make you a juror unfit
6 for jury service. Obviously, if that were true, we would
7 probably never be able to seat a jury.

8 The law is this. It's kind of a common
9 sense thing. You have to, as a juror, wait and listen to
10 the evidence and decide all these issues just on what you
11 hear in the courtroom. The fact that you have read
12 something in the newspaper or seen something on TV, cannot
13 influence your decision.

14 You probably know from reading the
15 newspapers and you look like you follow local politics and
16 news pretty well, that what's recorded in the paper is not
17 always that accurate, especially when you find out if you
18 have personal knowledge, maybe your situation with Ted
19 Benevides, obviously, you know him. You probably have heard
20 things over the years, seen things in the newspaper, and you
21 know they are a lot different, talking to him or his wife or
22 whatever.

23 A. Right.

24 Q. And that's the whole point of the law, is even
25 though you may have read something, you have to wait and

1 listen and make your decision solely on what you hear in the
2 courtroom. Do you think that you can follow that rule of
3 law?

4 A. Yes, uh-huh.

5 Q. Okay. Let's talk about these Special Issues
6 for a moment there. You only get these in capital murder
7 cases. You only get to these questions unless you found the
8 defendant guilty, then you move to the punishment phase. At
9 that point in time you can hear additional evidence.

10 If you could read question No. 1 to
11 yourself real quickly and we'll go over that.

12 A. (Prospective juror complies.)

13 Q. We call that the future danger question.
14 We're asking the jurors if they can actually predict how the
15 defendant would behave in the future, if he's going to be a
16 continuing danger to society.

17 Do you feel you could answer that
18 question, if you are given enough information?

19 A. Yes.

20 Q. The question under the law starts out with a
21 no answer. And the State has to prove to you beyond a
22 reasonable doubt it should be answered yes. Just like
23 someone in the beginning of a criminal trial starts out with
24 the presumption of innocence, we have that burden of proof
25 to prove him guilty. The same here. We have to prove it

1 should be answered yes. There's no automatic answers to
2 these questions. And that's another common sense rule.

3 The fact that you found him guilty beyond
4 a reasonable doubt of capital murder, doesn't mean, well, if
5 he's guilty of capital murder, he's a continuing danger.
6 That very well may be the case. The law contemplates there
7 may be some cases that he's not and some cases where he is,
8 depending on facts.

9 And the jurors have to do this. They
10 have to wait and listen to the additional evidence that
11 comes in the punishment phase and go back in the jury room
12 and then make their decision based on what the evidence was.
13 If they feel we have proved it beyond a reasonable doubt,
14 they would answer it yes. If you don't, you leave it as a
15 no answer.

16 But there's not an automatic yes answer.
17 If there were, just because you found him guilty, there
18 wouldn't be any point to going through this process.

19 Do you feel you can follow the law in
20 that regard and wait, listen to the evidence, weigh any new
21 evidence that came in, and then decide if Special Issue No.
22 1 should be answered yes?

23 A. Uh-huh.

24 Q. And would you require the State of Texas to
25 prove to you beyond a reasonable doubt that it should be

1 answered yes?

2 A. Yes.

3 Q. Okay. You see what we have to prove is
4 there's a probability that the defendant would commit
5 criminal acts of violence. The words in these questions
6 will be left up to you and the other jurors. You won't get
7 any legal definitions. I want to go over that with you.

8 When you see "probability", what does
9 that mean to you? What is "probability"?

10 A. To me, you would have to analyze what their
11 life was like before the murder happened, you know, their
12 childhood, high school, etc. And if they have ever
13 committed an act or if this was a first time and then, you
14 know --

15 Q. So past behavior --

16 A. Past behavior.

17 Q. -- would be important to you and then their
18 role in the particular crime would be important to you?

19 A. Yes.

20 Q. The laws have given us a few guidelines.
21 Obviously, probability has to be more than a possibility,
22 because anything could be possible.

23 A. Right.

24 Q. And it doesn't mean a certainty. I don't
25 think that we could ever prove a certainty. Most jurors

1 tell us more likely than not. Are you comfortable with that
2 type of definition, that a probability it would occur?

3 A. Yes.

4 Q. We have to prove that he would commit criminal
5 acts of violence that would constitute a continuing threat
6 to society. When you see criminal acts of violence, what
7 types of crimes do you think of?

8 A. Um, robbery, murder, you know, selling drugs,
9 things like that.

10 Q. Something that harms other human beings?

11 A. Yeah, uh-huh.

12 Q. And we have to prove he would be a continuing
13 threat to society. When you see "society", what does that
14 mean to you?

15 A. You know, human beings.

16 Q. Anyone and everyone he may come into contact
17 with?

18 A. Yes.

19 Q. Including people in the prison system?

20 A. Possibly, yes.

21 Q. Again, that question is answered
22 independently. You can hear if he has had previous criminal
23 history. You can hear from those witnesses. If he has led
24 a life -- or been a Boy Scout his whole life, you can hear
25 that type of evidence. It all comes down to what's

1 happening in his previous life, as well as the role he
2 played in that particular crime.

3 A. Right.

4 Q. Once you answer that question, if it's a yes
5 answer, you move on to the second question. The second
6 question, again, starts out with a no and the State has to
7 prove to you beyond a reasonable doubt it should be answered
8 yes.

9 Now, this question runs on a little bit,
10 but it asks whether the defendant actually caused the death
11 of the deceased, or did not actually cause the death of the
12 deceased, but intended to kill the deceased or another, or
13 anticipated that a human life would be taken.

14 Now, the first part of the question is
15 pretty easy. If you believed from the evidence that he
16 actually caused the death, you would answer that yes.

17 A. Right.

18 Q. Second part involves that party situation I
19 talked about where he may not be the actual triggerman. If
20 you don't think he actually caused the death, we have to
21 prove that he intended to kill the deceased and you kind of
22 touched on that yourself, I think, what the person's intent
23 was. Would they have done that had they been in the
24 position to kill?

25 A. Right.

1 Q. Or another person or anticipated that a human
2 life would be taken. And, again, that comes from all the
3 facts, how the crime was carried out. Do you believe from
4 that particular crime were they anticipating that might
5 occur, even though they were not the actual triggerman?
6 It's a common sense kind of deal where it comes down to
7 that, has to be decided on each fact.

8 A. Right.

9 Q. Just because you found him guilty doesn't mean
10 it's a yes. You can use the same evidence you heard in the
11 guilt/innocence stage and then answer that question. You
12 may even use the additional evidence that you heard in the
13 punishment phase to help you answer that question.

14 But ultimately you have to decide it
15 independently and require the State to prove it to you
16 beyond a reasonable doubt. Do you feel that you could do
17 that?

18 A. Yes.

19 Q. Okay. Now, this last question is the
20 mitigation question. It's the last question you get to.
21 Neither side has the burden of proof. It's kind of what we
22 call a catch-all or safety net. You have already found him
23 guilty. You have already found he's a continuing danger and
24 he anticipated a life would be taken, but you get to look at
25 all his background and the crime itself and then decide is

1 there something that you feel is sufficiently mitigating
2 that a life sentence should be imposed rather than a death
3 sentence. It's a decision you make in your heart, but based
4 on the evidence. He doesn't get off scot-free. He would
5 have to serve a life sentence, obviously.

6 But it's something that you have to be
7 able to keep your mind open to and consider. Is there
8 anything as you sit here today that you think could be
9 possible mitigating evidence? Any type of evidence that you
10 can think of or an example?

11 A. Well, of course, pertaining to this case, I
12 haven't heard the case, so --

13 Q. No. I can't ask you about this case. I'm
14 asking about just in general.

15 A. I don't know. If they were the driver of the
16 car and everyone else was inside a 7-Eleven, shooting
17 someone. I would have to think twice whether they should
18 get the death penalty or capital punishment.

19 Q. What would be important to you about that,
20 then, if they were an accomplice, as you said, the driver,
21 that sort of thing?

22 A. Um, again, just the circumstances, kind of
23 what led up to the day that the incident happened. I would
24 have to just really hear the whole case.

25 Q. And we can't preview the case.

1 A. I know.

2 Q. So we just talk about this in general. But
3 the situation you gave of some guys going in a 7-Eleven and
4 a guy was in the car, the driver of the car, again, would be
5 similar to some of the stuff we talked about, about weapons
6 used, how much he knew what was going on, how involved he
7 was and that?

8 A. And then, you know, his previous incidents
9 that have happened. Has he been arrested before? And I
10 would have to look at it all.

11 Q. All right. If it's someone --

12 A. If it's just a pattern that continually
13 happens, and then eventually this group is involved in a
14 murder, you know, obviously he has a pattern.

15 Q. So it would be different, I guess, if someone
16 had never been in trouble and they get involved with a group
17 of people?

18 A. Yeah. Sometimes things happen when you are in
19 a group and it's happened to all of us. And you are at a
20 party and, you know, it happens.

21 Q. Okay.

22 A. Murder is different.

23 Q. So it will be similar to some of the other
24 issues, but it's something you would consider, then, too?

25 A. Uh-huh.

1 Q. We can't tell you what mitigation evidence
2 would be. It's up to you and the other jurors. Sometimes
3 you hear different types of information. You might hear
4 about a person's background. Maybe they were abused in
5 their childhood. Maybe they had a poor childhood. Maybe
6 they were mentally or physically abused.

7 So we have some jurors that tell us that,
8 if it's very severe, probably could be mitigating to me. We
9 have other jurors that tell us I would feel pretty bad for
10 that person, but when you are an adult, you have to be held
11 accountable for your actions.

12 A. Right.

13 Q. And there is plenty of people that go through
14 that and don't start killing people or be involved with
15 capital murder. We have people that tell us drug use might
16 be -- is possibly mitigating. We have other jurors that say
17 it's aggravating, if you know what you're doing, that sort
18 of thing. Anything strike you along those lines that may be
19 possibly mitigating?

20 A. Yes.

21 Q. Okay. What would that be?

22 A. Well, you know, drug use. If a person is
23 under the influence, I mean, it can -- it can influence your
24 thinking ability, but, then again, if you are prone to
25 commit an act like that, whether you are on drugs or not,

1 you are going to commit the act.

2 Q. Right. And I'm not talking about he would
3 know in drug use. Talking about the situations where they
4 voluntarily take it, not where someone slipped them a
5 Mickie.

6 A. Right. But if they voluntarily, if they have
7 a drug habit and they go out to commit crimes to get money
8 to buy drugs, I mean, that's, you know, a situation.

9 Q. Would you view that as potentially mitigating?

10 A. Yeah, possibly.

11 Q. What would be important about that?

12 A. Um, because if there was a pattern, again,
13 this goes back to if there's a pattern the person has that
14 there have been several crimes they've committed, robbing
15 7-Elevens to get drugs or money for drugs. That's a
16 pattern. And they end up committing murder, then that would
17 lead towards -- to me towards severe punishment.

18 Q. So if it's something they have been doing, not
19 a first time offense?

20 A. Again, if it's first time, it just depends on
21 the circumstances, you know. Terrorism, I mean, anyone that
22 commits terrorism, I don't care what their circumstances
23 are, to me should get a death penalty.

24 Q. Okay. Fair enough. The bottom line is you
25 have to keep your mind open to that.

1 A. Right.

2 Q. And then if you think something might be
3 mitigating, but it has to be sufficiently mitigating to
4 where a life sentence should be imposed, you can do that?

5 A. Yes.

6 Q. In a capital murder case you often have
7 psychiatrists or psychologists that will come in. Many
8 times the defense calls them. Sometimes the State even
9 calls them. Sometimes both sides call them. They can
10 render opinions about whether someone is a future danger,
11 whether someone anticipated. They can give you lectures,
12 talk about studies about mitigation, that sort of thing.

13 Some people put a whole lot of stock in
14 psychologists or psychiatrists and their opinions. Other
15 people will tell us, look, I know if you look hard enough
16 and pay them enough money, you will find one of those kind
17 of guys to say what you want them to. Other people view it,
18 I will listen to it, but it's not going to carry any greater
19 weight with me than any other witness. The facts of the
20 case will still be very important, but I would listen to it.
21 How do you feel about those types of experts?

22 A. Well, I think psychiatrists and psychologists
23 are great people, if you get a good one. There are some
24 that are bad out there and I just view that as part of the
25 pie, of the puzzle, of the circumstances. And they can be

1 very good judges of character and give good insights,
2 especially for people that have never had any experience.

3 I don't know. I think they can give some
4 good insight into the human being.

5 Q. Do you think you would be more likely to
6 follow a person's expert advice or their testimony than you
7 would like the facts of the offense or something like that?

8 A. Are you saying that would I follow --

9 Q. An opinion, a psychologist expert --

10 A. I would listen to what they have to say and --
11 to what they have to say, as well as the other.

12 Q. Just a piece of the pie?

13 A. Yes, a piece of the pie.

14 Q. Do you believe all psychologists or
15 psychiatrists would give you valuable information or are
16 there some that are just getting paid to form an opinion and
17 --

18 A. Um, kind of depends on who they are. I mean,
19 again, I know some that are tremendous doctors, but I know
20 they're some bad ones because you read about it. But I
21 think you just have to listen to what they say.

22 Q. That particular witness?

23 A. Right.

24 Q. Let me go over a few rules that apply to each
25 case. There is the presumption of innocence. Every

1 defendant starts out with that presumption of innocence and
2 the State has to overcome that presumption by putting on
3 evidence.. Could you follow that rule of law and presume the
4 defendant innocent and require the State to prove it beyond
5 a reasonable doubt?

6 A. Yes.

7 Q. The burden of proof never leaves this table.
8 It always stays on the table. You might anticipate the
9 defense might put on witnesses or argue or ask questions.
10 They don't have to because the burden of proof never leaves
11 this table. You can't put a burden on them.

12 Can you follow that rule of law and keep
13 the burden of proof on the State?

14 A. Yes.

15 Q. The burden of proof goes to every portion of
16 the indictment. If we fail to prove just one element or one
17 part of the indictment, then the defendant is entitled to a
18 not guilty finding. Do you feel that you can follow that
19 rule?

20 A. Yes.

21 Q. That goes to every portion of the indictment,
22 including the county. I don't anticipate this will happen,
23 but if we failed to prove this crime occurred in Dallas
24 County, maybe it was close to Ellis County or Tarrant
25 County, and actually you believed from the evidence that it

1 did fall over there, you wouldn't be able to help us out and
2 go, I'll give them that one. You would have to find him not
3 guilty. You may not like it. You could run upstairs and
4 get us fired. But you couldn't help us out. Do you feel
5 that you can follow that rule?

6 A. Yes.

7 Q. You probably have heard of the rules regarding
8 the Fifth Amendment. If someone wants to testify in their
9 trial, they can. Nobody can stop them. But if a defendant
10 chooses not to, the Court will instruct you that you can't
11 hold that against them. There could be a number of reasons
12 why a person may not testify. They may not make a good
13 witness. They could be simply following the advice of their
14 lawyers. And the Judge would instruct you, you just can't
15 hold that against them. You have to determine the case just
16 based on the evidence. Can you follow that rule?

17 A. Yes.

18 Q. Police officers often testify in these
19 criminal cases, obviously, that's common sense. A lot of
20 people respect the job the police do, but you can't start
21 them out ahead of the other witnesses. You may very well do
22 that after you judge them. But kind of like what you said
23 about psychologists or psychiatrists, there's good ones and
24 bad ones. Same with police. So you have to start them out
25 like you would any other witness and judge their credibility

1 once they testify. Could you follow that rule of law?

2 A. Yes.

3 Q. Parole laws sometimes get in the news a lot.

4 In a capital murder case I can tell you that the Court would
5 instruct you that a life sentence for capital murder means
6 the defendant would have to serve forty calendar years
7 before he would be eligible for parole.

8 But the Court would also instruct you
9 that you couldn't consider that in any way in your decision.
10 You are probably aware of that. You just have to consider a
11 life sentence, a life sentence. Could you do that?

12 A. Yes.

13 Q. Okay.

14 MR. SHOOK: Could I have one moment,
15 Judge?

16 THE COURT: Yes.

17 Q. (By Mr. Shook) I've gone over a lot of areas
18 pretty quickly. I think I've exhausted all my questions.
19 Do you have anything you feel we need to know about you that
20 we haven't asked that would be important to us?

21 A. No, not that I can think of. Never been
22 picked for jury duty so --

23 Q. The bottom line is and I think you have said
24 it, is, I mean, you feel you are in favor of capital murder?

25 A. Oh, yeah.

1 Q. You have told us that you personally feel you
2 could assess those or answer these questions in a way which
3 ultimately would receive the death penalty, if it's proven
4 to you?

5 A. Right.

6 Q. You have told us that you agree with the law
7 of parties or an accomplice can be found guilty and
8 ultimately receive the death penalty, depending on the
9 facts. You can do that?

10 A. Uh-huh.

11 Q. And you can follow all these rules and you can
12 wait until all the evidence is in and you will just make
13 your decision?

14 A. Uh-huh.

15 Q. Okay. That's all we can ask and I appreciate
16 your patience with my questions. Thank you.

17 THE COURT: Ms. Busbee?

18 CROSS-EXAMINATION

19 BY MS. BUSBEE:

20 Q. First of all, Ms. Rehwinkel, would you like a
21 glass of water?

22 A. No, I'm really fine. I had some coffee
23 waiting in the room.

24 Q. Sometimes we make you talk so much you are dry
25 mouth by the time --

1 A. I'm not used to sitting still. Usually I'm
2 out seeing clients and moving around.

3 Q. Feel free to fidget. That's okay. We don't
4 like it too much either. Let me just put this in context
5 for you, because I think it makes people feel better about
6 being drilled about their opinions if they understand that,
7 you know, we had, what, 2,500 people in the morning. I
8 think you were a morning panel person and that many in the
9 afternoon. You were juror No. 945 and yet you are not even
10 the 30th person we've talked to. So that's a huge winnowing
11 process where some people get winnowed out, not even by us.
12 They have answered that they would give the death penalty
13 for jaywalking or they have answered that they would never
14 do it at all, no matter what. So we didn't see those. And
15 we have stacks of people that fall in the middle range,
16 which you do. And we meet and some people, frankly, are
17 just not smart enough to even come down here and talk to us
18 about it and we can tell that. And we kind of trade out.

19 So the people that we get up here are
20 people that we think are going to be honest with us and they
21 usually are and you are, and who are obviously intelligent.
22 So I want you to understand that that is what you are. So
23 you don't feel like you are being grilled so much.

24 A. How many people are you interviewing because
25 we were curious, the people that were sitting in the --

1 Q. We're going to interview until we get 14, but
2 we have three now, and so it's going to take a while.

3 A. A lot of time. The date is right around the
4 corner, the 10th.

5 Q. Of November.

6 A. But I mean -- okay.

7 Q. You know, we've done this before. Some of us
8 many times, some of us a few times. But we'll get a jury.
9 And if we didn't, I guess we would have to postpone it. But
10 I think we will.

11 A. Right.

12 Q. Now, you were very forthcoming in your
13 questionnaire and actually Mr. Shook asked pretty much all
14 the little housekeeping questions I would have asked you.

15 Now, are you okay with having phone
16 contact with your office or your shop during the day?

17 A. As I said, two weeks is a long time for me,
18 but, then again. Now, if it was in December, it would be no
19 problem, because in December my industry really slows down.
20 But, I mean, it's okay. It's just, it is a lot of time to
21 be away from the office.

22 Q. And we do that -- if people didn't have much
23 to do, they probably wouldn't be the sort of juror that we
24 would want, anyway, for sure.

25 A. Right.

1 Q. Back when we asked you all these questions,
2 but you didn't really know how our death penalty scheme
3 worked, it kind of has to be that way so we get your knee
4 jerk reaction to things and then we bring you in here and
5 tell you just exactly how our scheme works.

6 But you said there would be some cases,
7 although you favor the death penalty, in which a capital
8 crime should have a life sentence instead of a death
9 sentence.

10 A. Uh-huh.

11 Q. Could you tell me what your thoughts are on
12 that?

13 A. Again, if I understood it, for example, if
14 someone is out driving and hit someone and they die, you
15 know, that to me doesn't automatically call for the death
16 penalty.

17 Q. Sure. And that wouldn't be a death penalty
18 case now, now that you know.

19 A. Yeah. You have explained and, of course, half
20 of it sunk in and the other half didn't. But if it's -- I
21 don't know.

22 Q. I don't want to put you on the spot. And I am
23 putting you on the spot. Sadly, I'm required to kind of put
24 you on the spot on some things. I'll be real frank with you
25 because you have been frank with us. You are what I would

1 consider a real strong proponent of the death penalty and
2 that's fine. Most people are. I think that's true and
3 that's true of some of the people we have talked to here.

4 The only thing is I need to be sure that
5 you are not so strong a proponent of the death penalty that
6 Mr. Murphy wouldn't get the fairest trial possible. So
7 that's why I want to ask you some questions. And I think
8 you are going to tell me.

9 Obviously, you know about this case in
10 general, in a general sense?

11 A. Yeah. It's been a couple of years, but I
12 remember hearing about it and seeing it on TV.

13 Q. Sure. It was a big deal at the time.

14 A. Uh-huh, uh-huh.

15 Q. Have you formed any opinions about this case
16 that --

17 A. I really haven't because, as I said, I have
18 read a little, seen it on the news, and then something was
19 on the news a couple of weeks ago about one of the men that
20 were tried and that's about it. I'm real busy, so that's
21 not something I --

22 Q. Okay. And you said something in here, I don't
23 know if it's significant, but you were asked if you thought
24 that police were more likely or less likely to tell the
25 truth and you pointed an arrow and said both. What was on

1 your mind when you said that?

2 A. Every encounter I have had with a police
3 officer has been positive. I have never had problems. And
4 I guess that's why I put an arrow to the opposite because
5 some people I know have had negative experiences and don't
6 trust police officers. But I personally do trust them.

7 Q. And that's -- I guess you are saying just what
8 I would expect you to say. You look at the witness and
9 decide from there, right? Let's see. I don't know if Mr.
10 Shook talked to you about this. When we get to where we
11 talk to a lot of people, sometimes they start running
12 together.

13 A. I'm sure they do.

14 Q. But there could be in a case like this what we
15 call a lesser included offense. In other words, the proof
16 might be almost there, but not quite enough to make the case
17 a capital murder. Might be an aggravated robbery or it
18 might be just a murder, not a capital murder.

19 And in such a case the jury wouldn't be
20 talking about these Special Issues. It would be -- it would
21 be a different question. And I'm going to ask you whether
22 or not if you heard a case and you determined that there may
23 have been a death, but you determine it was not a capital
24 murder, it's an aggravated robbery, say, the range of
25 punishment in that instance would be from five to 99 years

1 or life imprisonment. Could you consider the lower end of
2 the punishment range under those circumstances?

3 A. Again, it depends on the case and the
4 circumstances.

5 Q. I can't name you a case. I am naming a case
6 where the person was originally charged and tried for
7 capital murder.

8 A. Okay. Okay. Again, it depends on what the
9 person's involvement is in the case. I probably would have
10 a hard time with five years, but --

11 Q. I'm not saying that you would have to say you
12 would give five years. I'm just asking you in reality would
13 you even consider the five-year punishment range?

14 A. I'd consider, depending on what their
15 participation was in the capital case.

16 Q. That's fine. Isn't this a crazy process?

17 A. Because you have to analyze and hear all the
18 facts and just see --

19 Q. Exactly. All right. Let's put you back on
20 our hypothetical jury and we're considering these Special
21 Issues. Now, I like to restate this because you said it
22 perfectly. You told me all the law and came at me real fast
23 and I'm pretty sure I understand it, but it's got to be a
24 blur on a Monday morning.

25 So your situation, a person can be

1 convicted of capital murder under the circumstances we
2 talked about, death of killing a police officer?

3 A. Right.

4 Q. Or fireman, child under six, but that is not
5 -- a capital murder does not equal the death penalty. And,
6 in fact, the way our law is structured, it's far from it.
7 Capital murder means a life sentence --

8 A. Okay.

9 Q. -- automatically. And that life sentence, no
10 range of punishment there. That's a life sentence. And the
11 law says that that's a life sentence for which the person
12 would have to serve forty calendar years, day for day --
13 we're not talking about good time or parole -- before they
14 would even be considered. So that's a very harsh
15 punishment.

16 And the law then says the State can seek
17 the death penalty, certainly in a capital murder case, but
18 they are required to make some additional -- I don't know
19 how to put this. We misstated it earlier this morning. I
20 don't want to misstate it again.

21 The State is required to have additional
22 proof or -- or that a jury must find beyond a reasonable
23 doubt. And I know what your attitudes are towards certain
24 of these things. If you had found someone guilty of the
25 offense of capital murder, would you need to hear anything

1 in addition? I mean, I'm not talking about whether you
2 agree with the law or not, but you, yourself, would you need
3 to hear anything else to decide that they would probably be
4 a future danger?

5 A. Um, I would have to hear what you all
6 presented. But, then again, I would be interested in
7 knowing what their life was before the incident happened and
8 if they have committed incidents before the murder.

9 Q. So would you need to hear that from the State?

10 A. Yeah, uh-huh.

11 Q. You don't need to hear anything from us to
12 convince you one way or the other?

13 A. Because the State would have to tell us, the
14 jurors, that this person, you know, committed these acts
15 before or -- I mean, I would want to know that, if they had
16 committed anything.

17 Q. Before you could answer that question?

18 A. I think so, uh-huh.

19 Q. And --

20 A. I mean, because I think most people when they
21 read articles in the paper about a murder, I mean, a major
22 murder, want to know what the person did beforehand.

23 Q. Sure.

24 A. You know, what led them to -- up to that act.

25 Q. So that would go into your thinking on whether

1 or not someone would be a future danger? Let's go on to
2 question No. 2 because you said something, and I made a note
3 about it, because, you know, we don't see this question if
4 the person is the gunman, so to speak, or it's clearcut who
5 caused the death. This you are going to see and you will
6 see in this case where the State is relying on a party
7 charge, or an allegation someone is a party, for them to be
8 guilty of capital murder. So they will have to prove to you
9 not just -- not just that they should have anticipated that
10 a death would be taken. That's way back in the past when
11 you were finding them guilty or not guilty.

12 A. Uh-huh.

13 Q. But it goes further than that. In order to
14 assess a death penalty, you would have to find beyond a
15 reasonable doubt that that person did anticipate that a
16 human life would be taken. And what sort of things would
17 factor into that for you?

18 A. Again, if it was premeditated going into the
19 act or -- I mean, that to me would be a big part and I don't
20 know. I guess I'd just look at the whole thing of what the
21 incident -- the incident was a murder and do they go there
22 anticipating shooting someone or just, you know, robbing a
23 7-Eleven? And, you know, I would just have to look at it
24 all.

25 Q. I guess this is my question. Would you need

1 to hear some information from the defendant as to what his
2 thought processes were or what happened --

3 A. I think that would be important for a jury to
4 hear that. Whether the person would be telling the truth,
5 is another thing. You have to analyze that.

6 Q. I think most people would say that. Would you
7 -- would you need to hear from the defendant in order to
8 decide that question?

9 A. Well, in a death case I think you should hear
10 from the defendant, yes. I mean, I would think, again, all
11 the jurors would want to hear all the evidence.

12 Q. Well, sure, of course you would, because it's
13 a very important decision.

14 A. It's an important decision, that's right.

15 Q. Everybody -- of course, you know, you talk to
16 them after the fact, immediately right after the case. I
17 assume you think people think about their service for years
18 to come and upon pondering it, I suppose some cases might be
19 more clear-cut than others.

20 A. Exactly. And you don't want to -- I wouldn't
21 want to come into a case with a preconceived idea that he's
22 guilty and I'm going to sentence him to death. I mean, I
23 want to hear all the information. That's just how I am.

24 Q. So I guess what I'm asking you, in order to
25 find Special Issue No. 2 to be no, you would want to hear

1 all the facts, including the defendant, whether you believed
2 him or not, you would like to hear from him in order to make
3 that decision?

4 A. Yes.

5 Q. And without hearing from him, that would kind
6 of hurt his case or hurt us?

7 A. I think so. I would think that he would want
8 to speak on his own behalf or where his mind was during the
9 incident -- I don't know all the details of the case, so --

10 Q. That's what I wanted to know is how your
11 thought processes work, because these are -- we're slapping
12 you with controversy and issues and thoughts that you had no
13 idea you were going to be facing, I'm sure, when you walked
14 in here this morning at 8:15.

15 A. No, I didn't.

16 Q. But if that's your feeling that you really
17 need to hear from the defendant before you decide --

18 A. I mean, I would want, as I said, to have all
19 the facts of the case to make a logical decision.

20 Q. As to Special Issue No. 3, that's also -- I
21 have two questions on that. I know that you know the bare
22 bone parameters of this case. And this would require a
23 juror, after they decided Special Issue No. 1 and Special
24 Issue No. 2 in the affirmative beyond a reasonable doubt, do
25 you think that in this case you have already formed an

1 opinion about mitigation that would prohibit you from giving
2 that Special Issue any effect?

3 A. No, because I really don't know enough about
4 it yet. I really don't.

5 Q. Let me talk to my co-counsel here a moment.
6 Is there anything that I've asked you that has raised
7 something that you would like to -- you would like to talk
8 about this or ask about this?

9 A. Not really.

10 Q. Okay.

11 A. You know, I don't know. You all are looking
12 for something and I'm just trying to answer the questions
13 that I understand. Maybe I'm not understanding some of the
14 things you are saying.

15 Q. No. You understand perfectly. I guess the
16 reason I go through the pumping you up thing at the very
17 beginning, sometimes I think people think there's something
18 wrong with their own opinion after we start drilling them on
19 the fine points. There's no right or wrong answers, but
20 just how you feel about things. I think you've been honest
21 with me because you say things, you say what a lot of people
22 say, these Special Issues would depend on the case.

23 A. Right.

24 Q. And Special Issue No. 2 is a difficult --
25 that's a difficult issue to decide. And in that, you tell

1 us that in that issue you really couldn't decide that issue
2 in the defendant's favor, so to speak, answer no to that,
3 unless you heard from him?

4 A. I would want to hear what that person did, as
5 well as the other people involved in the case. How did each
6 participate in the murder and, you know --

7 Q. You would have to?

8 A. -- and then decide. You would have to hear it
9 all.

10 Q. And you would need to hear, particularly since
11 you are deciding the fate of the individual you are trying,
12 you would want to hear from him and need to hear from him
13 before you could make that decision?

14 A. I think so. I think I should hear.

15 Q. Now, you understand that he doesn't have to
16 get on the witness stand, obviously. We talked about that.
17 But you would need -- you would want to hear from him?

18 A. Well, if he didn't get on the witness stand,
19 how are you going to hear --

20 Q. You are not.

21 A. Okay.

22 Q. That's what I'm telling you. He doesn't have
23 to get up there by law, obviously. But if it's important to
24 you, that's what I want to know.

25 A. I think it would be important to him to want

1 to, you know, state where his mind was at when the incident
2 happened.

3 Q. Okay. So --

4 A. I would think, I mean --

5 Q. And that's what I want to know. I want to
6 know what you think, because if you are on the jury, what
7 you think is very important to --

8 A. I would think if someone was up for a murder
9 case, and possibly going to be sentenced to death, he or she
10 would want to sit there and defend themselves. I was either
11 thinking this or, you know, you would think. But not
12 everybody thinks the same, so --

13 Q. So when somebody's life is on the line, they
14 are not getting up on the witness stand, that says something
15 to you?

16 A. Well, I would think it would. You would
17 think, as I said, they would want to state what they were
18 thinking when the incident happened. But if they don't,
19 then maybe they've decided that they are going to get the
20 death penalty and why bother.

21 Q. Okay.

22 A. They have given up already.

23 Q. So that's your opinion of --

24 A. I guess.

25 THE COURT: Let me ask you to refer to

1 your guide real quick. And if you look in there, I don't
2 know what page, it's 2 or 3, and it says constitutional
3 rights. See the title there?

4 PROSPECTIVE JUROR: Okay.

5 THE COURT: Read the -- that page,
6 specifically the last paragraph, that's the law.

7 PROSPECTIVE JUROR: So I can't hold it
8 against the juror (sic) if they decide not to testify?

9 THE COURT: Ms. Busbee is very artful and
10 she needs to know your opinions. I need to know if you
11 understand the law. The law is, if he elects not to
12 testify, a juror cannot go back to that jury room and say he
13 didn't testify, because. Just what you did. So you dreamed
14 up a reason why someone may not testify. And you can't do
15 that if you are sworn in, in this case to be a juror, and
16 end up in that room back there.

17 And that's what she has to be aware of.
18 He has a constitutional right he doesn't have to present any
19 evidence --

20 PROSPECTIVE JUROR: Okay.

21 THE COURT: -- period. He has a
22 constitutional right he doesn't have to testify, period.
23 Now, you said, I would think that he would want to testify.

24 PROSPECTIVE JUROR: Uh-huh.

25 THE COURT: I would like to hear his

1 testimony. Her question was -- and I can have the Court
2 Reporter read it back -- she said, would you like to have
3 him testify and would you need to have him testify?

4 PROSPECTIVE JUROR: Right.

5 THE COURT: She put "like" and "need" in
6 the same sentence. And you're being truthful. Most people
7 would like to hear --

8 PROSPECTIVE JUROR: Right.

9 THE COURT: -- the whole story.

10 PROSPECTIVE JUROR: Exactly, I would.

11 THE COURT: Whose job is it to prove it
12 to you?

13 PROSPECTIVE JUROR: Well, I would think
14 the defendant's attorneys would have to prove maybe why
15 their client should get -- I don't know.

16 THE COURT: Go back to Special Issue No.
17 1 and 2. The State has the burden to prove Special Issue
18 No. 1 and Special Issue No. 2 beyond a reasonable doubt.

19 PROSPECTIVE JUROR: Okay.

20 THE COURT: The defendant doesn't have to
21 prove anything to you on any of those issues.

22 PROSPECTIVE JUROR: So the State has to
23 prove that every party has committed X acts and the
24 defendant doesn't have to say anything?

25 THE COURT: She doesn't have to answer

1 one question.

2 PROSPECTIVE JUROR: She can sit there the
3 whole time. Okay. Okay.

4 THE COURT: No. 3, there's no burden
5 either way. You can hear whatever you want to hear from
6 whatever source. It can be yes, no, maybe, in the middle,
7 it doesn't make any difference. There's no burden. The
8 State doesn't have to prove anything to you and the
9 defendant doesn't have to prove anything to you. It says
10 taking into consideration all the evidence.

11 So now my question that I started with
12 you an hour and a half ago is, do you understand the law?
13 And you said, oh, sure. It's not quite as clear as it was
14 when you walked in the door.

15 PROSPECTIVE JUROR: Well, yeah, it's a
16 little different. The State has to prove their case, but I
17 personally would think the defendant would want to speak.
18 That's my personal -- even though they don't have to in this
19 case, personally I would think they would want to do that.

20 THE COURT: We're not changing your
21 opinion. But understanding the law, if he elects not to
22 testify --

23 PROSPECTIVE JUROR: Right.

24 THE COURT: -- are you going to hold it
25 against him?

1 PROSPECTIVE JUROR: I would wonder. I've
2 got to be honest with you, I would wonder, yeah.

3 MR. SHOOK: Are you saying that you can't
4 follow the law, then, ma'am?

5 MS. BUSBEE: I'm not finished inquiring.

6 PROSPECTIVE JUROR: I can follow the law,
7 yes, but I don't know, my personal opinion.

8 Q. (By Ms. Busbee) Nobody expects you not --
9 that's why we're asking these questions before we put you on
10 the jury, so you can tell us what you really feel. Do you
11 really feel that if the defendant didn't testify, that would
12 be a negative for him in a case like this, just say so.

13 A. Yeah, I would. That's why I said it. I
14 would, even though the State has to present their case, I
15 would think the defendant would want to --

16 Q. I mean --

17 A. If he wants to spend life in prison, maybe he
18 doesn't and he wants to die quickly.

19 Q. And that's what I appreciate. It's not that
20 you are not a lawabiding person, you are just telling us how
21 you really feel.

22 A. I'm really trying to.

23 Q. You speak up there --

24 A. I am trying to.

25 Q. Nobody is trying to call you a scoff law

1 (phonetic). Is that a fair statement? You understand what
2 the law is, but to you, if the defendant didn't testify, you
3 would hold it against him in this type of case?

4 A. Well, I would consider that. I don't know if
5 I would say hold it against him, but it would be in my mind
6 because that's -- I have to be honest. It would be because
7 that's --

8 Q. I appreciate it.

9 MS. BUSBEE: I'll pass the juror, Your
10 Honor.

11 THE COURT: Ms. Rehwinkel, wait for us
12 outside and we'll have you back in, in just a minute.

13 [Prospective juror out]

14 THE COURT: What says the State?

15 MR. SHOOK: State has no challenges for
16 cause.

17 MS. BUSBEE: Defense has a challenge for
18 cause, Your Honor, based on her inability to give the
19 defendant his right against self-incrimination.

20 THE COURT: The Court is of the opinion
21 that Ms. Rehwinkel, even after being given the chance to
22 read the law again and the constitutional rights of Mr.
23 Murphy, she still held the opinion, well, if he wants the
24 death sentence, I guess he doesn't want to testify. It's
25 pretty clear to me that she's going to require the defendant

1 to testify in order to avoid the death sentence. I do not
2 find that she's qualified. Ask her to come back in, please.

3 [Prospective juror in]

4 THE COURT: We appreciate your time and
5 service to this Court. You are not going to be seated on
6 this jury.

7 PROSPECTIVE JUROR: Okay.

8 THE COURT: So when you came in this
9 morning, like I said, these laws sometimes look pretty easy
10 on paper, but when you start thinking about it, it can get
11 quite difficult. We appreciate your service and maybe we'll
12 find another case down the line that you can be on. Thank
13 you.

14 [Prospective juror out]

15 THE COURT: Is Reverend Ryan available?

16 [Prospective juror in]

17 THE COURT: Good afternoon.

18 PROSPECTIVE JUROR: Hello.

19 THE COURT: Reverend Kathryn Ryan; is
20 that correct?

21 PROSPECTIVE JUROR: Yes.

22 THE COURT: Welcome to the 283rd. I
23 appreciate you coming down back in May and filling out that
24 short questionnaire, what is your name, when were you born,
25 and what happened next? The attorneys have invited you back

1 to visit with you about those issues and I provided the law
2 for you, and have you had an opportunity to read the guide?

3 PROSPECTIVE JUROR: Yes.

4 THE COURT: It's a lot of law to hand
5 someone and we don't expect you to understand all of it and
6 how it all interrelates. That's what the attorneys are
7 going to visit with you about. At the end of the process,
8 the two questions I have is, number one, do you understand
9 the law? The second one, if you understand the law, can you
10 follow the law? That's my function here at this stage of
11 the trial.

12 The only question that I have for you
13 before I let the lawyers begin, will you be able to serve
14 this Court for two weeks beginning November 10th?

15 PROSPECTIVE JUROR: I don't see any
16 reason why I could not.

17 THE COURT: Mr. Wirskye?

18 MR. WIRSKYE: May it please the Court.

19 KATHRYN RYAN,
20 having been duly sworn, was examined and testified as
21 follows:

22 DIRECT EXAMINATION

23 BY MR. WIRSKYE:

24 Q. Is it Reverend? Is that the proper address?

25 A. No. Kay will be fine, or Ms. Ryan.

1 Q. How about Ms. Ryan?

2 A. That will be fine.

3 Q. My name is Bill Wirskye. I'm the Assistant DA
4 that will be visiting with you for the next few minutes.
5 Because this is a capital murder case where the State is
6 seeking the death penalty, the law allows us to speak with
7 the jurors one on one instead of like a big group like we
8 normally do. I know it's a bit strange to be up there on
9 the witness stand. You kind of feel like you are on trial,
10 but we want people to come down and tell us their honest
11 thoughts, opinions, and feelings.

12 We recognize that not everyone probably
13 wants to be or is comfortable being a juror in a case where
14 the death penalty is a potential punishment. We talk to a
15 lot of people. Obviously, we don't want to put anybody on
16 the jury that -- and kind of back them into a corner where
17 they may feel like they need to -- or they're called upon to
18 violate their religious, moral, ethical concerns, things
19 like that.

20 You have told us that you are against the
21 death penalty; is that right?

22 A. Yes, sir.

23 Q. Can you tell us a little bit more about that,
24 how strongly you feel about it, where it comes from, that
25 belief?

1 A. Well, I mean, my belief, my feelings, on the
2 death penalty, I think, come from two places. One is my
3 sense that it seems to be applied unevenly. The people with
4 the best defenses seem to get off and statistically the
5 number of people, for instance, of certain races who end up
6 on death row are much higher than other races who also
7 commit crimes.

8 And so that's part of it, is a sense that
9 we don't apply it justly, part of my opposition. My deeper
10 opposition is the fact that I don't think that we should go
11 around taking human life for any reason or lightly take any
12 life.

13 Q. You have religious scruples, I guess, for lack
14 of a better word against it, than kind of a practical
15 reason?

16 A. Yes, sir.

17 Q. It sounds like you are probably not the best
18 person to be on this jury; is that right?

19 A. I -- I would think that probably is right. I
20 mean, I would try to follow the law, but you have to know
21 that.

22 Q. We really don't want to put anybody in a bad
23 position. You know, we don't want anybody over there whose
24 personal beliefs, for whatever reason, religious, practical,
25 whatever, I guess, would substantially impair them in trying

1 to follow the law and render a verdict. And it kind of
2 sounds like that's what you are telling me; is that right?

3 A. Yes, sir.

4 Q. And if you are, and these are the magic words,
5 if you were selected to serve as a juror in this case, that
6 your opposition to the death penalty would substantially
7 impair your ability to sit in this type of case; is that
8 right?

9 A. Yes, sir.

10 Q. Okay. Hold on just a second. I think we have
11 an agreement here.

12 THE COURT: Reverend, we appreciate your
13 coming down here. The parties have agreed to go ahead and
14 excuse you, as he said, straight up. We appreciate it. We
15 need all viewpoints, but in this case, it's not yours.

16 PROSPECTIVE JUROR: Right. I appreciate
17 that. Thank you.

18 THE COURT: You are free to go. Thank
19 you so much.

20 [Prospective juror out]

21 THE COURT: Ms. Curtis.

22 [Prospective juror in]

23 THE COURT: Ms. Curtis, good afternoon.
24 Is it Alicia Curtis?

25 PROSPECTIVE JUROR: Uh-huh.

1 THE COURT: Welcome to the 283rd. I can
2 tell you are just a little bit nervous?

3 PROSPECTIVE JUROR: Yeah.

4 THE COURT: Well, I wish there was a more
5 informal way to do this, but it's not. The other option is
6 you are packed in a room with 750 other people where it's
7 hot and nowhere to sit and write on and we have the two
8 extremes where you are hidden in the group and now you are
9 the focus of attention, if you will. Certainly not designed
10 to be intimidating.

11 We want to give you an opportunity to,
12 first, understand the law. The two questions that I have at
13 the end of the process are, do you understand the law? And
14 we're going to spend some time with you on that. The second
15 is, once you understand the law, can you follow the law?

16 This is a copy of your questionnaire just
17 so you can have it in front of you. It's been several
18 months since you looked at some of those questions and they
19 can refer to your answers if they need to.

20 So those two questions, do you understand
21 the law, can you follow the law, that's my function here at
22 this point. And the lawyers will go through the law, give
23 you examples, try to help you understand how it relates, and
24 give you a workable idea of what's going on here.

25 PROSPECTIVE JUROR: Okay.

1 THE COURT: If you don't understand, just
2 say, hey, I don't understand. Will you explain it or give
3 me another example. And the bottom line is they're just
4 looking for your thoughts.

5 PROSPECTIVE JUROR: Okay.

6 THE COURT: No wrong answers, so don't --
7 it's like -- like if you fail this exam. You can't. It's,
8 as I say, just tell the truth.

9 So looking at the law that I provided for
10 you, do you have any questions that jump out at you at this
11 point?

12 PROSPECTIVE JUROR: No.

13 THE COURT: Will you be able to serve
14 this Court beginning on November 10th for those two weeks?

15 PROSPECTIVE JUROR: Yes.

16 THE COURT: Very well, Mr. Wirskye -- no,
17 Mr. Shook.

18 MR. SHOOK: May it please the Court.

19 ALICIA CURTIS,
20 having been duly sworn, was examined and testified as
21 follows:

22 DIRECT EXAMINATION

23 BY MR. SHOOK:

24 Q. Ms. Curtis, my name is Toby Shook. I'm going
25 to be asking you questions on behalf of the State today.

1 This is Bill Wirsky. He's the other prosecutor assigned to
2 the case. This is Brook Busbee and Juan Sanchez. They are
3 the defense attorneys. This is Patrick Murphy at the
4 defense table, the defendant.

5 As the Judge said, we just want your
6 honest opinions. You have been on a jury before, I believe.
7 It was a civil case?

8 A. Yes.

9 Q. That jury selection was like most criminal
10 jury selections. You were selected from a group, asked
11 questions in a group. But because it is a capital murder
12 case in which the State is seeking the death penalty, we go
13 through this one-on-one process. You've been very helpful
14 with your answers on the questionnaire and we appreciate you
15 taking the time -- I know that took a long time to fill out.
16 And, believe it or not, it saves you time and it's quite
17 helpful to us.

18 And I want to follow up on some of that
19 and, obviously, talk to you about capital murder and how you
20 feel about that, some of the laws and rules that apply to
21 these cases.

22 You were born in Grand Prairie and I
23 believe you grew up here in the Dallas area; is that right?

24 A. Yes.

25 Q. And you work now as a physical therapist?

1 A. Yes.

2 Q. What exactly do you do on a day-to-day basis?

3 A. I work in home health. I travel to people's
4 homes after pneumonia, stroke, and help them get back on
5 their feet.

6 Q. One of the interesting things I saw in your
7 questionnaire is you -- one of your hobbies is martial arts?

8 A. Yes.

9 Q. How long have you been doing that?

10 A. Since my daughter was born, a year and a half
11 ago, not much at all. Before that, about five years.

12 Q. What type of martial arts are you involved in?

13 A. I did primarily -- I liked weapons. I liked
14 koli. I did wing chung, some ling ti (phonetic).

15 Q. How did you get involved in that?

16 A. Started taking Spanish with my husband and I
17 always wanted to try martial arts. And he saw a school and
18 I went and interviewed the teacher and liked it and fell in
19 love with it and did it four nights a week.

20 Q. Did he take with you, your husband?

21 A. No.

22 Q. I take it he doesn't argue much with you?

23 A. Yes, he does.

24 Q. But you also put on there that you met several
25 police officers in your martial arts classes?

1 A. Yes.

2 Q. What cities do they work for?

3 A. Um, let's see, Tecan (phonetic) worked in
4 Arlington and the other one I met a couple of times, he
5 worked in Ft. Worth.

6 Q. But you weren't close friends with them?

7 A. There was another guy. I only saw some of the
8 police officers a few times. They didn't come on a nightly
9 basis. Their schedules didn't allow it. He worked in
10 Irving. I can't remember his name.

11 Q. Okay. Did you look at the witness list?

12 A. Yes.

13 Q. Did you happen -- I know there's a whole bunch
14 of names on the witness list, but you didn't come across
15 his?

16 A. The only one I saw was Whitely and I knew a
17 girl named Kimberly Whitely when I was young, but that's the
18 only thing that jumped out at me.

19 Q. Just one more follow-up. What is it that you
20 like about martial arts?

21 A. I guess the sense of accomplishment. It's
22 very complicated and I like to be able to do some of the
23 techniques and, you know, follow up and do that and then I
24 would say I'm not big on the sparring and the attacking
25 part. I wasn't aggressive like that. I just enjoyed the

1 training and the camaraderie.

2 Q. Now, the civil case that you sat on, there was
3 a \$200,000 judgment, I believe. What type of case was it?

4 A. A lawyer was due some money from an individual
5 and they were saying that they weren't going to pay him
6 because apparently there was some missing piece of paper
7 that said he was going to take his money once the company
8 flourished. But that never happened. The company folded
9 apparently.

10 Q. And you awarded for the lawyer?

11 A. Yes.

12 Q. Was it a very complicated trial?

13 A. No.

14 Q. Okay. And I notice you put on your
15 questionnaire that you participated more than most of the
16 jurors and maybe had more influence. Why did you put that
17 down? Were you the --

18 A. Some of the jurors were questioning -- there
19 was a gentleman on there, he was talking about his health
20 and how terrible his health was and he was elderly and poor,
21 pitiful him. And he took an aspirin and antidepressant and
22 he was 80 years old.

23 THE COURT: Was that a lawyer or another
24 juror?

25 PROSPECTIVE JUROR: This was a witness.

1 And they were wanting to know, you know, how could he be, if
2 he was really, really sick. On an aspirin and an
3 antidepressant at 80 years old, you are actually doing quite
4 well.

5 Q. (By Mr. Shook) Over all, was your experience
6 positive, would you say?

7 A. Yes.

8 Q. And I also -- I see that you live in Irving.
9 And, obviously, this case got a lot of publicity when it
10 occurred because it occurred in Irving. What do you recall
11 about the case?

12 A. I recall -- I recall that there was a robbery
13 at the Oshman's store and that one of the police officers,
14 Aubrey Hawkins, was killed. Other than that, I can say I
15 honestly did not follow it a whole lot. There's been a lot
16 going on in my life.

17 Q. Yes, I understand that. So the law --
18 obviously, most of our jurors, the great, great majority
19 have heard or seen something on the news about this case and
20 that doesn't make you ineligible or unfit to be a juror.
21 The simple rule is, if you are placed as a juror in the case
22 or sat as a juror, you would have to decide the case on the
23 facts here in the courtroom and not anything that you have
24 seen on TV or read in the newspaper. You can follow that
25 rule?

1 A. Yes.

2 Q. Okay. Let's talk for a minute, then, about
3 capital murder, the death penalty. I want to know how you
4 personally feel about it. You checked on the questionnaire
5 that you are in favor of it in some cases. Tell us why you
6 are in favor of the death penalty or the purpose you think
7 it serves society.

8 A. Oh, boy. I really have been dealing with that
9 since I got this letter. I really honestly thought the
10 letter was your service has been done. We picked the jury.
11 Thank you, bye. So I've really been wrangling with that
12 back and forth. But I do think people need to be judged on
13 what they do. I know a lot of my friends and stuff are
14 like, no, you will be judged when you go to Heaven. When
15 you die, that's your sentence.

16 But I'm here now and this is our world
17 and I think that we do have to make accountable for what
18 people do and make society safe.

19 Q. Okay. Have you always been in favor of the
20 death penalty since you were, say, an adult? Maybe a better
21 way to put it, have you ever been against it, that changed
22 your mind or --

23 A. I can actually say I've wavered back and
24 forth. And most of the time it's kind of like, well, I
25 don't know. I wasn't on the jury. I don't know. Because a

1 lot of my friends, a case would come up and they would go
2 back and forth on whatever, they should have hung him like
3 this, that, and the other. And I, you know, if I don't
4 follow it, I'm not there, I don't know. I guess if I'm most
5 in favor of it, it's going to be if someone injures a child.
6 That's just --

7 Q. But philosophically have you ever been opposed
8 to the death penalty?

9 A. At times, I guess. It's kind of hard, you
10 know, putting somebody to death, you know, saying, oh, yes,
11 my yes answer to that is going to cause somebody to die.

12 Q. Have you followed any cases in the media,
13 locally or nationally, that were death penalty cases or
14 potentially death penalty cases?

15 A. I don't follow hardly any cases.

16 Q. Well, in Texas, the death penalty is reserved
17 just for certain types of murder cases. They have to be
18 intentional killings. Can't be self-defense or accidents.
19 It's intentional murders, unjustified homicide. And they
20 have to occur with some other aggravating facts, murder
21 during the course of a felony like robbery. Go into a
22 7-Eleven, rob the clerk, shoot them, that could be a death
23 penalty case. Murder during a burglary. If you break into
24 someone's home, kill someone in the house. Murder during a
25 rape, during an arson, those types of situations. Also,

1 murder of a police officer on duty or fireman on duty can be
2 a death penalty situation. Murder of a child, as you said,
3 under the age of six, is what the law says. Murder of more
4 than one person in the same transaction, serial killer, or
5 mass murder situation. And murder for hire. Someone does
6 it for money, hitman situation.

7 But those are the specific types of cases
8 that have been reserved for the death penalty. Any of those
9 types of cases which you, if it were up to you, you would
10 take out for consideration just because of the type of crime
11 they are?

12 A. No.

13 Q. The reason I ask that is some people from a
14 personal point of view, some of them have a broad scope.
15 They would include a lot more types of crimes. Other people
16 would limit it to just certain types. And other people
17 agree and they believe those sound just about right.

18 A. That sounds fair.

19 Q. You feel that when a police officer's life is
20 taken, that's the type of case that should be considered for
21 the death penalty?

22 A. Yes and no. I mean, I also know that a police
23 officer knows their job and they are put in harm's way. But
24 then on the same token, they need to be reserved a little
25 bit better because they are put in harm's way all the time.

1 So, yes, I do believe that a police officer, that should be
2 a capital punishment.

3 Q. Okay. Now, when we think of the death penalty
4 and we think of examples, you always think of examples,
5 obviously. I brought up the 7-Eleven example. We always
6 think of the triggerman when we first talk about the death
7 penalty or the capital murder. I go in and I pull the
8 trigger and murder the person during that felony.

9 But a capital murder, like any crime,
10 actually, can be committed by more than one person, what we
11 call the law -- in that case in Texas is called the law of
12 parties. I don't know why they use parties, really, as that
13 term, but also you probably know it as accomplice. An
14 accomplice helps you commit a crime. If they are actively
15 involved, they can be held accountable, too. They can be
16 found guilty of that crime and they can be punished.

17 The same is true of capital murder and
18 the death penalty. If Mr. Wirskye and I decide we want to
19 rob a bank and we get another guy to help us, he's going to
20 be our getaway driver. He drives us there. We get out.
21 He's going to leave the car running. He's going to warn us
22 if someone is coming. He's going to be ready to speed off.

23 We go into that bank. What we have
24 agreed to do is I'm going to be the gunman in this thing.
25 I've got a gun. We give a big bag to Mr. Wirskye and he's

1 going to gather up the money out of the tills. I pull a gun
2 out and I threaten everybody and he starts gathering money
3 up.

4 Maybe one of them starts to press an
5 alarm. Mr. Wirskye warns me and I just execute them and we
6 leave. We get caught. I can obviously be prosecuted for
7 the death penalty. I'm the triggerman. I caused the death.
8 Under the law, Mr. Wirskye and the getaway driver, actively
9 involved, participating as parties to the offense, they can
10 be prosecuted for the capital murder, too. They can even
11 get the death penalty under certain facts.

12 But what I like -- what I do with every
13 juror I talk to is talk to them about that because people
14 draw a line a lot of times. They believe philosophically in
15 the death penalty and when they think about it and talk
16 about, obviously, the triggerman, the person that causes the
17 death. But when you talk about an accomplice, the
18 nontriggerman, they draw a line there. They would not, if
19 it were up to them, give the death penalty for that type
20 person. A long prison term maybe, but not the death
21 penalty.

22 Other jurors agree with the law and say,
23 no, no, I think an accomplice, a nontriggerman, a person who
24 does not actually cause the death, could get the death
25 penalty, depending on the facts. And they agree with that

1 aspect of the law.

2 But there's not any right or wrong
3 answer. But I like to get your gut reaction on how you
4 honestly feel about that, because when we usually talk about
5 that, we think of the triggerman situation. But I want to
6 know your views on the accomplice, the person prosecuted
7 under that law.

8 A. Um, the guy that's in the bank with you, well,
9 he has the opportunity to stop it. He knows you have a gun.
10 The guy in the car, I can see where he might not get the
11 death penalty. He didn't know -- did he know that you had a
12 gun when you left? Did he know that you were going to
13 possibly have the opportunity to kill somebody? He wasn't
14 in there to possibly stop you. All I know, he may have only
15 known you were going for some money.

16 Q. You bring up several good points. First of
17 all, the last point, if he is just present and not
18 participating and didn't even know a crime is occurring,
19 really, then he's not guilty. If we fooled him and said,
20 give us a ride down to the bank, we need to cash a check,
21 and wait for us outside. And meanwhile we're robbing the
22 bank. He has no idea we have guns and are going to commit
23 robbery. He would be not guilty under that fact situation.
24 The law would say mere presence alone is not -- you have to
25 actively know about it and participate.

1 That's a good point. But the other
2 situations, if he does know what is going on, could be a
3 situation -- you brought up a couple of good points. If he
4 wasn't in there, did he actually know whether the shooter
5 had a gun, that sort of thing. Would that be important to
6 you?

7 A. Yes.

8 Q. Because he wouldn't -- if he did know that he
9 was armed or they were armed men going in there, would that
10 be a factor in favor of that as the type of case an
11 accomplice, even if they are not actually even in there, but
12 right outside, would be a proper death penalty case?

13 A. Oh, boy, these are so hard. It's hard to say
14 yes or no. It's kind of black and white, you know. We're
15 just kind of throwing out a hypothetical situation. I've
16 got to kind of come up with a yes or no answer.

17 Q. Well, what I'm really looking for is your
18 reaction. I can't go into the facts of the case. People
19 feel very differently on the accomplice. We have people
20 that are very much for the death penalty when it involves
21 the shooter, but they say, I really am not for it for the
22 accomplice business, even if they know, you know, it's five
23 guys and they've all got guns, you know, and they go in
24 there and one guy does the shooting, that's a death penalty.
25 But the other people didn't pull the trigger.

1 A. Yeah. I mean, if they all have guns, if you
2 go into a robbery with a gun, I mean, you have the intent to
3 harm somebody, possibly kill. I mean, if you don't have a
4 gun, I don't know what goes on. I mean, like I said, you
5 need to know the facts of the case. Did he know -- did the
6 accomplice know there was a gun as you were going in or did
7 he just whip one out of his coat and say, no, give me the
8 money or something like that? There's just so many
9 variables.

10 Q. But it's important to you, I guess, if the
11 accomplice had knowledge that someone had a gun?

12 A. I would be more prone to give a death penalty
13 if he had a gun, also. He may not have shot the person, but
14 if he walked in with the gun, he had intent to harm.

15 Q. What about the guy that just waits outside in
16 the car? Could he ever get the death penalty in your
17 situation or does he need to be present, participating
18 inside, or --

19 A. It would be hard for me to give him the death
20 penalty.

21 Q. Because he's not inside?

22 A. He wasn't inside, didn't know what went on. I
23 mean, he's out there gunning the engine. So, I mean, that's
24 where you would have to have all the facts in the case and
25 have to find out exactly what went on prior to the bank

1 robbery.

2 Q. Like what?

3 A. Well, if -- I mean, maybe he's the ringleader.
4 Maybe he's the one that said, okay, guys, I want you to go
5 in here and do that. Then in that case he instigated the
6 whole thing.

7 Q. Okay. The reason I get into that is we can't
8 go into the facts, but I can tell you that we are
9 prosecuting this case under the law of parties or
10 accomplices. In other words, we will not be arguing that
11 Mr. Murphy caused the death in this case, but we will be
12 prosecuting him for the death penalty under that law of
13 parties.

14 So I want to make sure everyone
15 understands that, understands the law, and find out if they
16 have a problem with it. If they do, that's fine. If they
17 don't, that's fine, too.

18 Now, you've spent some time thinking
19 about this, I think, because -- I think you filled out the
20 questionnaire probably thought, like most people, maybe they
21 won't call me and then you get the letter.

22 I believe you said that that caused you
23 to start thinking about the death penalty a lot more at that
24 point?

25 A. Uh-huh.

1 Q. And that's a natural reaction, obviously.
2 Because it is one thing for us to talk about it
3 philosophically and quite another when you think about
4 actually participating in this type of trial.

5 The trial is divided into two parts.
6 There's the guilt/innocence stage where we have to prove the
7 indictment. If we got that, that's not the end of the
8 trial. We move to the punishment phase where you would hear
9 additional evidence.

10 At the close of that, you get these
11 questions. We have to prove that the defendant would be a
12 continuing danger to society. We would have to prove in
13 this situation that if he didn't cause the death, that he
14 anticipated a death would occur and we would have to -- the
15 evidence would have to show that there was not sufficient
16 mitigating evidence to warrant a life sentence rather than a
17 death sentence. And those questions are answered yes and
18 no. We'll go over those in more detail in a minute.

19 But if the State proves yes, yes, and no,
20 that is, he's a danger, he anticipated a life, and there's
21 not sufficient mitigating evidence, the Judge has no choice.
22 He would sentence the defendant to death. You don't write
23 death or life, but he would be sentenced according to how
24 the jury answers those questions. If they are answered any
25 other way, it's a life sentence. But those are the only two

1 possible outcomes once the defendant has been found guilty.

2 A. Okay.

3 Q. Now, if he is found guilty, the Judge will
4 then sentence him to death and he will be placed on death
5 row. Are you aware of the method of execution in Texas?

6 A. Lethal injection.

7 Q. That's right. I think you followed the news
8 before on some of these that, depending on the case, the
9 news covers some in greater detail. In a political year, it
10 seems like they do it even more.

11 But the procedures are the same in each
12 case. A person is placed on death row. At some point in
13 time, I can't tell you when, he would be given an actual
14 date of execution. The day prior to that date he is moved
15 from death row into downtown Huntsville to that kind of red
16 brick building that you have seen with the clock on the
17 wall.

18 On the date of his execution he's always
19 given time, if he chooses, to spend with his family, his
20 friends, or a minister. He's given a last meal. At 6:00
21 p.m. the law mandates that all executions take place.

22 He's taken from a cell near the chamber.
23 He's taken by force, if necessary. He's placed on a gurney.
24 I'm sure you have seen on TV in that kind of blue room with
25 the leather straps on it.

1 A. I'm thinking out of movies and stuff.

2 Q. Well, they show it on the news a lot, but it's
3 a hospital gurney, but it has leather straps and he's put
4 down there and secured and needles are placed in his arm.
5 There's a visitors -- two visiting rooms for visitors, some
6 for the defendant, if they choose to attend, and some for
7 the victim's family.

8 The warden is there. After he's been
9 secured and needles are placed in his arm, he's given an
10 opportunity to give a last statement. These are always
11 covered in the news. Sometimes they ask for forgiveness.
12 Sometimes they are defiant to the end. Sometimes they say
13 things like, I didn't do it. Why are you killing an
14 innocent person? You hear about the loved ones there. It's
15 a very, obviously, dramatic event.

16 But once he makes that statement, the
17 warden simply signals the executioner that injects poisons
18 which shut down his lungs and heart. It happens very
19 quickly.

20 And that's, quite frankly, our goal in
21 this case. We have the type and quality of evidence that we
22 think we can convince a jury of the defendant's guilt and
23 that the questions should be answered yes, yes, and no, and
24 that some day Patrick Murphy will lie dead on a gurney,
25 executed in the manner I have described.

1 I don't mean to be morbid, but you are
2 right when you think about it, when you really start
3 thinking about it, it affects people differently. But I
4 want people to realize exactly what this case is about, in
5 that if they get placed on this jury, the type of decisions
6 they are going to have to make.

7 Because some people that are opposed to
8 the death penalty and tell us that at the get-go and that's
9 fine. We can call them down on another case. Some people
10 are too adamantly for it. Others are for it, they may not
11 want to be here, but can make those decisions. Other people
12 are for it philosophically, but once they start thinking
13 about it, they go, look, I can't really make that decision.
14 It's going to weigh on me. I'm going to think about that
15 man dying. I'm going to think about his family. I don't
16 think that I can make that decision. If they feel that way,
17 that's fine. That's why we have about a thousand people
18 that come down.

19 But I want you to be sure and reflect for
20 a moment. And I'll just ask you, do you think you are the
21 type of person who could actually make these decisions, if
22 we prove it, knowing that this man at the end of the table
23 will be executed some day, if you answer those questions the
24 way we believe the evidence will show?

25 A. Yes.

1 Q. Why do you think you can?

2 A. If the law -- I mean, if it's very black and
3 white and these are your specific questions and I answer
4 them, I mean, without a reasonable doubt, this is this, this
5 is this, this is this, then that's the way it's got to be.
6 That's the way our law is set up. I can't change that. I
7 mean, I feel that that is my duty.

8 Now, do I want to be here? No. Do I
9 wish I would have got picked for a traffic ticket? Yes.
10 But, yes, I believe I could do it.

11 Q. And you have no problems sitting as a juror in
12 a case where the State is proceeding under the theory of an
13 accomplice being prosecuted for the death penalty?

14 A. No, I don't have a problem.

15 Q. Let's talk about these Special Issues for a
16 moment, then. If you will, take a moment to read Special
17 Issue No. 1 to yourself.

18 A. [Prospective juror complies.]

19 Q. That question asks the jurors to make a
20 prediction on how the defendant will behave in the future.
21 Do you feel comfortable making that type of -- giving that
22 type of answer, answering that question, if you are given
23 sufficient evidence?

24 A. You mean answering yes or no to that?

25 Q. Yes.

1 A. Yeah.

2 Q. What types of things would you want to know
3 before you answer question No. 1 yes?

4 A. Probably the things I couldn't know, like
5 history.

6 Q. Actually, you could know that.

7 A. At that point -- like history, what crimes
8 have been committed before, you know, this type of thing. I
9 mean, I am aware of the case that it was an escape from
10 prison. A bunch of inmates escaped from prison, so I knew
11 they were already in prison. So there was something illegal
12 going on there, you know, deviant behavior. But -- you
13 know, I guess primarily history.

14 Q. That's what most people tell us and that type
15 of evidence is admissible. You can hear even from the
16 witnesses themselves on previous crimes, if they are
17 available. You can hear what punishments were received.
18 You can hear good things, too, good and bad. And also you
19 get to consider the facts of the crime again in answering
20 that question.

21 The words here, you won't get legal
22 definitions. You will just use your own definitions. So I
23 want to go over with you "probability." We have to prove a
24 probability that the defendant would commit criminal acts of
25 violence. When you see "probability" used in that sentence,

1 what does it mean to you?

2 A. That they are highly likely to commit a crime
3 again.

4 Q. Highly likely, does that -- is that a
5 certainty or just better than 50 percent or where does it
6 register in your mind?

7 A. I guess it would -- I guess how -- I guess I
8 need to know exactly what you are asking me.

9 Q. Well, let me ask it this way. We can probably
10 never prove a certainly. Sometimes people tell us that and
11 obviously it has to be more than a possibility, more likely
12 than not. Some people tell us it would be 80 percent, 90
13 percent sure, other people tell us greater than 50 percent.
14 We get all kinds of answers.

15 I didn't know if anything was going on in
16 your mind when you read "probability" there?

17 A. No.

18 Q. "Criminal acts of violence", what does that
19 mean to you, "criminal acts of violence"?

20 A. It's kind of like violence. Robberies,
21 murders.

22 Q. Physical crimes to other humans, that sort of
23 thing?

24 A. Uh-huh.

25 Q. And we have to prove he would be a continuing

1 threat to society. What does "society" mean to you?

2 A. Anybody, any person, any place.

3 Q. Including people in prison that live or work
4 there?

5 A. I guess you bring that point up, yeah.

6 Q. That question starts out with a no answer and
7 the State has to prove to you beyond a reasonable doubt it
8 should be answered yes.

9 A. Okay.

10 Q. If we don't, you leave it as a no. If we do,
11 you answer it yes. But you have to be able to look at that
12 evidence independently and then make your decision. Do you
13 feel that you can do that?

14 A. Yes.

15 Q. Then we move on to Special Issue No. 2. Just
16 take a moment to read that to yourself.

17 A. [Prospective juror complies.]

18 Q. That question covers the parties issue.
19 Obviously, the first part, if we proved he caused the death,
20 that would be an easier answer. But if he did not actually
21 cause the death, we have to prove that he intended to kill
22 the deceased or another or anticipated that a human life
23 would be taken. The anticipated that a human life would be
24 taken, I imagine, comes in most of the time, the situations
25 that we were describing in our bank robbery scenario.

1 Do you feel that -- what types of things,
2 again, would be important to you when you see the question
3 asked that way as far as anticipate that a human life would
4 be taken?

5 A. Just like the intent to kill. You know, you
6 go into a robbery or, you know, go into a bank with a gun,
7 loaded gun, you have the intent to possibly shoot somebody.

8 Q. And in an accomplice situation, either they
9 are armed or if they know their accomplices are armed, would
10 that be important to you?

11 A. Yeah, I mean, before you go into any kind of
12 instigate -- or any type of thing, you have the opportunity
13 to stop, you know, not go, tell them to stop, you know, that
14 opportunity was there.

15 Q. Okay. Would it be important to you if they
16 knew what the -- if the accomplice that we were prosecuting
17 knew what the other individuals were like, their
18 personalities, that sort of thing?

19 A. Yeah, I think so.

20 Q. Okay. Again, that question starts out with a
21 no answer and it has to be answered yes by looking at all
22 the evidence and all the background evidence.

23 Then this last Special Issue you get to.
24 You don't get to it unless you have found him guilty, unless
25 you have found him a continuing danger and that he

1 anticipated a death would occur. And then you look at this
2 last Special Issue. If you would take a moment to just read
3 that to yourself.

4 A. (Prospective juror complies.)

5 Q. That's a long one.

6 A. That's a big one.

7 Q. A catch-all. Sometimes we call it the safety
8 net. You have found all these things out about the
9 defendant and this question allows you to look at everything
10 you have heard in the guilt/innocence stage, as well as his
11 background evidence and then decide is there sufficient
12 evidence, something in his background or the evidence that
13 makes you feel that a life sentence should be imposed rather
14 than the death sentence.

15 Now, as you sit there today, does
16 anything come to your mind that you might view as
17 potentially mitigating evidence?

18 A. No.

19 Q. Okay. Most people tell us that. We don't
20 anticipate you have been thinking about these issues. I
21 can't tell you what mitigating evidence is. You don't even
22 have to agree with what -- with the other jurors on what it
23 may be. You just have to be able to keep your mind open to
24 it.

25 We talk to a lot of jurors about what

1 they may view as potentially mitigating. Some people talk
2 about young age. In Texas you have to be 17 or above to be
3 prosecuted for the death penalty. We've had jurors tell us
4 a 17, 18, 19 year old, they may view that as potentially
5 mitigating because they may be immature. Other jurors tell
6 us, no, if they are legal adults at 17 under the law, I
7 would hold them as accountable as I would any person. Do
8 you have any views on young age or old age or anything like
9 that?

10 A. No.

11 Q. Okay. Sometimes you hear background evidence
12 about someone who has had a bad childhood. Maybe they have
13 been physically abused, mentally abused, or raised in a
14 broken home. Some jurors might feel that's potentially
15 mitigating because of the severity. Other jurors tell us, I
16 might feel bad for them, but they have got to be held
17 accountable once they are adults. There are lots of people
18 that undergo that and they don't commit these crimes. How
19 do you feel about that type of background?

20 A. I believe a lot of people have trauma in their
21 life at one point or the other. But, I mean, they also see
22 good and you choose which path you go down. So, I mean, you
23 know, I don't feel like that would actually -- I mean, it
24 would weigh one way or the other, but I don't know if it
25 would like, say, okay, life, I don't --

1 Q. You don't know if you would view that as
2 potentially mitigating, really, because of other people have
3 been through that or --

4 A. No.

5 Q. Okay. Sometimes we talk about drugs.
6 Sometimes people commit offenses while under the influence
7 of drugs. The law says that's not a legal defense if they
8 voluntarily took it, but you can view it as mitigating, if
9 you want. Other jurors view it as mitigating. Other jurors
10 say it's actually aggravating, if you are going to take
11 drugs and commit offenses. Do you feel one way or another
12 about that?

13 A. No.

14 Q. The bottom line is, really, you need to be
15 able to keep your mind open to this. If you hear something
16 that you think is sufficiently mitigating, that you would
17 answer the question yes, you could, knowing he would get a
18 life sentence. And if you hear it the other way, you would
19 answer it no -- or if you don't hear sufficient evidence,
20 you would answer it no.

21 And do you feel that you could keep your
22 mind open to that?

23 A. Yes.

24 Q. Do you think that's a good question to have in
25 this type of case?

1 A. Yes.

2 Q. Do you think you could honestly keep your mind
3 open to that question, if you had already found somebody
4 guilty, found they were a continuing danger, and found they
5 anticipated a life --

6 A. Absolutely.

7 Q. -- had been taken? Why is that?

8 A. Because when I answer these questions, that's
9 going to, you know, determine if the Judge is going to put
10 him on the gurney. So I have to remain open to that.

11 Q. Okay. And you sound pretty strong in that?

12 A. Yes.

13 Q. So you will be able to follow the law in that
14 regard?

15 A. Yes.

16 Q. I meant to ask you this earlier. When -- we
17 always ask if anyone in your close family, how they feel
18 about -- if they agree or disagree with you on the death
19 penalty and you said your husband was a little more
20 conservative than you are.

21 A. Yes.

22 Q. Has this been a subject you have really ever
23 discussed?

24 A. No.

25 Q. You are just guessing from how well you know

1 him?

2 A. Yeah, yes.

3 Q. That wouldn't cause any problems if you get on
4 the case, though. He's not going to start trying to tell
5 you how you should --

6 A. No.

7 Q. -- find or --

8 A. I can tell him to shut up real easily.

9 Q. Okay.

10 MR. SHOOK: May I have one moment, Judge?

11 THE COURT: Yes.

12 Q. (By Mr. Shook) One other area I wanted to go
13 in. We have this one question. Do you have your
14 questionnaire there?

15 A. Yes.

16 Q. Would you turn to page 10. We ask a lot of
17 questions and some of the answers, you know, everybody would
18 argue for hours why a person put that. Sometimes I like to
19 ask. At the very top there we asked the general statement,
20 do you generally hold your ground when you feel that you are
21 correct or are you usually swayed by the strong views of
22 others. And people put different things, usually the top
23 three. Rarely do we have people that say, I'm always swayed
24 by someone else, but once in a while we do. You put, I
25 always hold my ground. What was going through your mind

1 when you answered that?

2 A. I mean, if I believe something strongly enough
3 and I think that I am right, I'm not going to let somebody
4 sway me and tell me something else. I mean, if I see
5 something as, you know, this is the way it is, black and
6 white, I'm not going to let somebody muddy it up.

7 Q. And in your other jury selection, were the
8 arguments pretty straightforward or the deliberations, or
9 was there a conflict back there in the jury room?

10 A. It was really straightforward. There was no
11 question, whatsoever.

12 Q. One other area I forgot to go over. In the
13 punishment phase you will often hear from psychologists or
14 psychiatrists called by one side or the other. The defense
15 may call them to talk about future dangerousness, render an
16 opinion on that or question No. 2 or many times mitigation,
17 tell you what happened, or their opinion as to their take on
18 what happened, in the defendant's life. The State may also
19 call a psychologist or psychiatrist.

20 Jurors feel differently about these types
21 of experts. We had one question about that and I think you
22 said, you know, if they had seen them once, that would be
23 different or have they seen them or known them prior to
24 this. I guess, how many times they have met with them or
25 that sort of thing.

1 Some jurors don't believe in that stuff
2 at all. They call it the soft sciences or they feel you can
3 probably find an expert if you paid them enough money to say
4 whatever you want. And other jurors really do like those
5 types of experts. They think you get some good insights
6 from them and give them greater weight. And other jurors
7 really just plug them in like any other witness and not give
8 them any particular weight.

9 How do you feel about those types of
10 experts in the punishment area? Do you think that would be
11 valuable information to you or do you think --

12 A. I think I would weigh it equally with
13 everything else that went in. I wouldn't put them higher
14 up. I do believe that psychologists and psychiatrists, they
15 are more geared towards, you know, basic human behaviors.
16 So I think it's fair to put them on the stand to weigh one
17 way or the other, but I don't think that I would weigh it
18 heavier or lighter.

19 Q. Okay. Just plug them in like anyone else?

20 A. Uh-huh.

21 Q. That's all I have, then. Have you got any
22 questions over anything we've gone over? I know we covered
23 a lot of areas.

24 A. No, no questions.

25 Q. Anything you think, if you were sitting at

1 this table, that we would want to know about you or your
2 personality that would be important that we haven't gone
3 over?

4 A. No.

5 Q. Appreciate your patience.

6 MR. SHOOK: That's all we have, Judge.

7 THE COURT: Mr. Sanchez?

8 CROSS-EXAMINATION

9 BY MR. SANCHEZ:

10 Q. Good afternoon. I'm not going to have to
11 explain as much of the law as the State attorneys do, but
12 there are some things I want to go over with you. First of
13 all, I want to congratulate you on being formal and not
14 being superhappy on receiving a letter to come down here and
15 maybe sit on a death penalty case. I think both sides would
16 be a little concerned if you were jumping for joy and
17 walking in here and couldn't wait to get on. And of course
18 the other side, some people, you can get them in this room
19 and there's no way they are going to make a decision based
20 on their views.

21 But what we're looking for are jurors who
22 could look at both sides, keep their mind open to all the
23 arguments that are made, and all the issues that are being
24 presented in a trial, and especially this trial, and who
25 will follow the law.

1 You have indicated that you could follow
2 the law. And there are some things I just want to over with
3 you again. I don't feel it was made clear during the first
4 part of the questions that were asked of you, but a lot of
5 people think when a case, where the State is seeking the
6 death penalty, that as soon as they find somebody guilty of
7 capital murder, then it's an automatic death penalty. A lot
8 of people come in here thinking that and I think the State
9 did a good job explaining that and I want to make sure you
10 are clear on that.

11 A. Yes.

12 Q. Just because they are seeking the death
13 penalty and somebody is convicted of capital murder, that
14 doesn't automatically equal a death penalty. As a matter of
15 fact, the law presupposes that it's an automatic life
16 sentence and that's where it stays unless these three
17 Special Issues are answered in a certain way. And you
18 understand that, don't you?

19 A. Yes.

20 Q. And not only are they supposed to be proven --
21 I'm sorry. Not only are they supposed to be answered in a
22 certain way, but there are certain burdens that the State
23 must meet in actually answering those questions. And you
24 indicated that you could do that; is that correct?

25 A. Yes.

1 Q. And sometimes people forget, well, this is all
2 one big trial. But it's a bifurcated case. What that means
3 is it's actually two trials. The first part would be
4 whether you are convinced beyond a reasonable doubt that Mr.
5 Murphy is guilty of capital murder. If the State didn't
6 prove that beyond a reasonable doubt, well, it would be a
7 not guilty and you wouldn't even have to worry about these
8 Special Issues. Does that concern you in any way?

9 A. Well, no, it's straightforward.

10 Q. All right. Of course, the decision you make
11 in the first part of the trial in the guilt/innocence stage,
12 if you find him guilty of capital murder, that doesn't
13 necessarily mean that those Special Issues are answered
14 automatically. You understand that, too, correct?

15 A. Correct.

16 Q. And -- but, you know, us over here at this
17 side of the table, we want to make sure that we get jurors
18 up on the jury that would look at those Special Issues
19 independently of their decision they made before. Would you
20 do that?

21 A. Yes.

22 Q. And you would make them prove to you whether
23 he was a continuing threat to society, separate from the
24 decision you already had made, correct?

25 A. Correct.

1 Q. You could take into consideration what you
2 heard in the first part of the trial, but on Special Issue
3 No. 1 they would have to prove that to you independent.
4 Does that make sense?

5 A. Yes, I understand.

6 Q. All right. And on Special Issue No. 2, again,
7 where we talk about the law of parties on Special Issue No.
8 2, your answer, there again, would be independent of what
9 you answered in Special Issue No. 1 and the guilt/innocence
10 stage.

11 A. Yes.

12 Q. Okay. And you could do that?

13 A. Yes.

14 Q. All right. Now, you also seem like a person
15 that you want to take everything into consideration because
16 it's probably an important decision. It will be an
17 important decision.

18 A. Big.

19 Q. And sometimes people think they need to hear
20 everything under the sun before they could make that
21 decision. But you would have to make your decision based on
22 what you hear here in court. You talked about that you have
23 heard some things in the press, but would that in any way
24 cause you to form an opinion before you even start --

25 A. No.

1 Q. -- the trial?

2 A. No. I mean, and the stuff that I heard in the
3 press is just generalities. The last thing I heard was that
4 they were seating a jury and it was supposed to start on
5 November 10th. That's the kind of stuff I heard.

6 Q. And any evidence that you would use to make
7 your decision would be here in this Court and not outside of
8 this courtroom?

9 A. Correct.

10 Q. All right.

11 MR. SANCHEZ: That's all the questions I
12 have, Your Honor.

13 THE COURT: Ms. Curtis, if you would,
14 please, ma'am --

15 PROSPECTIVE JUROR: I'm done?

16 THE COURT: -- have a seat outside and
17 we'll have you back in, in a few minutes. Okay?

18 [Prospective juror out]

19 THE COURT: What says the State?

20 MR. SHOOK: We have no challenge for
21 cause.

22 MR. SANCHEZ: We have no challenge for
23 cause.

24 THE COURT: The Court finds juror No.
25 990, Ms. Curtis, to be qualified.

1 MR. SHOOK: Can we have a moment?

2 THE COURT: Do you need to step into your
3 office?

4 MS. BUSBEE: No, sir.

5 (Recess)

6 MR. SHOOK: We'll exercise a strike.

7 THE COURT: Ask Ms. Curtis to come back
8 in, please.

9 [Prospective juror in]

10 THE COURT: Ms. Curtis, we want to thank
11 you for your time and attention you have given this Court.
12 And I'm going to inform you that you shall not sit on this
13 jury, so your stress can go down a little bit. And -- but
14 we very much appreciate -- if we had people like you all day
15 long, it would make our job a lot easier. We appreciate
16 your time and you are free to go.

17 [Prospective juror out]

18 THE COURT: Linda Patterson.

19 [Prospective juror in]

20 THE COURT: Thank you. You may be
21 seated. Good afternoon, Ms. Patterson, how are you?

22 PROSPECTIVE JUROR: Just fine, thank you.

23 THE COURT: Welcome to the 283rd. And we
24 hope your stress level is not too high. We get various
25 reactions. This is as informal a proceeding as we can be.

1 Downstairs you are able to hide among the masses when you
2 fill out your questionnaire, but now the focus is on you.
3 And the reason we have to do this is the law requires that
4 we do it this way.

5 And have you had an opportunity to read
6 the guide and review your questionnaire? My job is to be
7 sure that you, at the end of this process, you understand
8 the law. That's why I gave you the Penal Code sections up
9 front, so you can begin to think about it. The lawyers are
10 going to go over it with you in detail and give you examples
11 and help you understand how the law really does work.

12 If you have any questions, this is the
13 time that you get to ask. See, if I do it in a big group,
14 nobody will ask any questions. But the idea is that lawyers
15 want to know what you're thinking. There are no wrong
16 answers, just honest ones.

17 PROSPECTIVE JUROR: Okay.

18 THE COURT: Only question I have for you,
19 ma'am, at this time, will you be able to serve this Court,
20 beginning on November 10th for those two weeks?

21 PROSPECTIVE JUROR: Yes.

22 THE COURT: I'll turn it over to
23 Mr. Wirskye.

24 MR. WIRSKYE: May it please the Court.

25 LINDA PATTERSON,

1 having been duly sworn, was examined and testified as
2 follows:

3 DIRECT EXAMINATION

4 BY MR. WIRSKYE:

5 Q. Ms. Patterson, how are you?

6 A. Just fine, thank you.

7 Q. Thanks for being so patient with us this
8 afternoon. My name is Bill Wirskye and I'm the Assistant DA
9 that's going to be visiting with you for the next few
10 minutes, kind of run over the information in your
11 questionnaire that you were kind enough to fill out, pretty
12 intrusive questionnaire, but thank you for filling that out.
13 Also talk to you about your thoughts and feelings and
14 opinions on the death penalty. And, finally, we may talk
15 about some of the laws that apply in a death penalty case
16 and some of the general principles that apply in any
17 criminal case.

18 What's been going on or going through
19 your head since you found out you had to come back for the
20 individual interview?

21 A. Well, I thought it would be interesting to
22 know the process and everything. I've never been chosen for
23 a jury.

24 Q. Some people tell us once they get that letter
25 to come back or phone call to come back, they really start

1 thinking about potentially actually being a juror in a death
2 penalty case.

3 A Sure.

4 Q. Did that go through your mind?

5 A. Well, it's a possibility to be a potential
6 juror.

7 Q. Okay.

8 A. Sure.

9 Q. And you work for the City of Garland; is that
10 right?

11 A. Yes, I do.

12 Q. What do you do for Garland?

13 A. I'm a secretary for the Street Department.

14 Q. Do you come into contact at all with any of
15 the police officers there or --

16 A. No.

17 Q. You don't have any friends that are police
18 officers?

19 A. I've got -- like my boss is married to a
20 police officer.

21 Q. Okay. But no one that you come into contact
22 on a day-to-day --

23 A. No.

24 Q. -- business basis or anything like that?

25 A. No.

1 Q. You have been down to the courthouse before on
2 some different cases?

3 A. Yes.

4 Q. Did you ever make it on an actual jury?

5 A. No.

6 Q. You came out and sat back there and got talked
7 to in the big group?

8 A. Yes.

9 Q. How many times have you come down on that?

10 A. Maybe twice.

11 Q. Other than that, is that pretty much your only
12 exposure to the courthouse and the criminal justice system?

13 A. Yes.

14 Q. I notice -- we always ask if anybody has any
15 relatives or anything like that that have come into contact
16 with the system. I think you put maybe your brother --

17 A. Yes.

18 Q. -- that had a case?

19 A. Uh-huh.

20 Q. What type case was that?

21 A. It was assault against a peace officer.

22 Q. Okay. Was that here in Dallas County?

23 A. I really -- I'm not sure where it happened,
24 exactly.

25 Q. Okay. And that was fairly recently or --

1 A. It's been close to five years.

2 Q. Okay. And what was the outcome of that case?

3 A. He is in prison now for five years.

4 Q. Is it something that you keep in contact with
5 him?

6 A. No.

7 Q. Never been to visit him or anything like that?

8 A. No.

9 Q. Did you attend his trial?

10 A. No.

11 Q. Do you know if he had a trial or did he plead
12 guilty?

13 A. I believe he had a trial.

14 Q. Okay. Based on what you know, do you think he
15 was treated fairly?

16 A. Yes.

17 Q. Okay. Nothing lingering in the back of your
18 mind that maybe the system didn't work for him or anything
19 like that?

20 A. No, no.

21 Q. Anything about having had that experience
22 weigh on your mind one way or another about being a juror in
23 this case?

24 A. No.

25 Q. Okay, fair enough. You told us that you are

1 generally in favor of the death penalty; is that right?

2 A. Um, well, if everything points to without a
3 reasonable doubt --

4 Q. Uh-huh.

5 A. -- then, yes.

6 Q. Okay. So you think we should have the death
7 penalty available as an option in our system?

8 A. Yes.

9 Q. Why do you think that? What purpose do you
10 think it serves?

11 A. Well, people just shouldn't be going around
12 taking other people's lives in cold blood for no reason.
13 There has to be some kind of deterrent.

14 Q. Has a deterrent effect, I guess?

15 A. Yes.

16 Q. Is it something you've been in favor of most
17 of your life or did you ever kind of switch positions or at
18 some point did you not believe in the death penalty?

19 A. I guess I've always believed that.

20 Q. Is there any particular case you may have
21 heard about, read about, or followed that comes to mind when
22 you think about an appropriate case for the death penalty?

23 A. I can't think of anything offhand.

24 Q. Okay. In Texas you may or may not know -- I
25 know that we're hitting you with a lot of law that we're

1 asking you to read. The only type crimes that the death
2 penalty is available are for murder cases and then only a
3 certain type of murder case. If you murder a particular
4 person like a policeman, fireman, prison guard on duty, a
5 child under six, or if you commit an intentional murder
6 during the course of another felony like robbery, burglary,
7 that type of thing, those are the only type cases where the
8 death penalty is potentially an option.

9 There are a lot of very bad and very
10 brutal intentional murders that don't fit under that, that
11 we can lock you up for life, but the death penalty is never
12 an option.

13 Just kind of generally, do you kind of
14 agree with that or if you were Governor for a day, would you
15 expand the group of cases where it's available or --

16 A. Oh, gosh, that was a long question.

17 Q. Some people come down and tell us, gee, I
18 think any murder case, it should be an option, or some
19 people tell us child abuse cases or --

20 A. Oh, okay, yeah, for the death penalty?

21 Q. Yes, ma'am.

22 A. Yeah. It should be just what it said in here.
23 If it's a peace officer or a child under six or I think if
24 it's just a coldblooded killing for no reason.

25 Q. Okay. Fair enough. Let me ask you this. We

1 talk to a lot of people and, you know, even people who feel
2 strongly about the death penalty, that we should have one,
3 tend sometimes to draw lines. And let me tell you what I
4 mean by that.

5 I think when we think of a capital
6 murder, maybe a murder in the course of a robbery, we think
7 about one guy taking a gun into a 7-Eleven, holding up the
8 clerk, shooting him, and taking off with the money. In
9 reality, oftentimes crimes are committed by more than one
10 person, you know, a group or gang of people.

11 The law in Texas allows for us to
12 prosecute not only, for lack of a better word, the
13 triggerman, the guy that actually pulled the trigger and
14 caused the death, but also nontriggermen, what some people
15 talk about as accomplices.

16 So even though you didn't actually cause
17 the death, you could still potentially suffer the death
18 penalty. A lot of people who are very strongly in favor of
19 the death penalty agree that you should have that death
20 penalty for the triggerman, but they don't feel it's
21 justified or ever appropriate when you are talking about an
22 accomplice or somebody that didn't pull the trigger. Where
23 do you come down on that issue?

24 A. Well, it's kind of a hard question, but I
25 think an accomplice, unless he knew that that person was

1 going to kill the store clerk, but I don't think he should
2 have the same crime if he didn't know that that other person
3 was just going to pull out a gun and shoot him. I don't
4 think it should be the same.

5 Q. Okay.

6 A. Unless he willingly said, shoot him.

7 Q. Let me give you an example. Let's say
8 Mr. Shook and I, the other prosecutor, decide we're going to
9 rob a bank. We're going to commit a bank robbery. That's
10 what we agree to do. We only have one gun. He's going to
11 take the gun in. He's going to hold up that bank teller.
12 And I'm going to go in unarmed with a bag to gather up all
13 the money so we can get away.

14 At some point during that robbery, for
15 whatever reason, maybe Mr. Shook sees somebody going for a
16 silent alarm or I tell him, hey, somebody's trying to call
17 911, something like that, Mr. Shook shoots and kills that
18 teller. Okay? He's committed an intentional murder during
19 the course of a bank robbery. He could be convicted of
20 capital murder and ultimately receive the death penalty, if
21 the jury thinks it is appropriate.

22 What do you think about someone in my
23 shoes, that kind of went in? I was the bagman. I didn't
24 have a gun. I was just going to pick up the money.

25 A. Well, you would still be involved in that

1 crime because you went along with it, but I don't think you
2 would -- I don't -- in my own opinion, I don't think that
3 you should be charged with the death penalty because you
4 weren't the triggerman.

5 Q. A lot of people tell us that, even people that
6 feel very strongly for the death penalty. They just don't
7 think it's justified. They hold the triggerman, the person
8 that actually caused the death, to a higher standard. They
9 might convict me and sentence me for life, lock me up for
10 the rest of my life.

11 A. Right.

12 Q. But they just don't feel that the death
13 penalty is ever appropriate when you are talking about
14 someone who didn't actually cause the death, the accomplice.
15 Is that kind of what I hear you saying?

16 A. Yes, because the person that the accomplice
17 may have thought he was just going to use the gun, you know,
18 just to scare him or something, but not actually use it, you
19 know.

20 Q. Actually, the law in Texas, going back to the
21 situation I gave you, even though I had no intent that that
22 murder happen, I could still be convicted of capital murder
23 and potentially face the death penalty. A lot of people,
24 very frankly, disagree with that law. You are not the first
25 person to tell us that. We hear that quite a bit.

1 And as we tell everybody, we talk to a
2 lot of people that come down here, not everyone is cut out
3 to be the perfect juror on a particular case.

4 A. True.

5 Q. And I'll be up front with you. We're
6 prosecuting this case and prosecuting Mr. Murphy as an
7 accomplice, a nontriggerman. So when we talk to somebody
8 like you who doesn't feel the death penalty is appropriate
9 for those accomplices, you know, it's very important we know
10 exactly how you feel. And that's kind of what I hear you
11 saying that under no circumstances should the accomplice,
12 the nontriggerman, ever be subject to the death penalty; is
13 that right?

14 A. Unless he was saying, shoot him, or egging him
15 on.

16 Q. Uh-huh.

17 A. I just don't think if he knew that he was
18 going to pull the gun, that --

19 Q. Okay. And there's really two different ways
20 that an accomplice can be found guilty, that I can be found
21 guilty. If I turned to Mr. Shook and say, shoot him, shoot
22 him, like you are talking about, egging him on, then I could
23 be found guilty as an accomplice.

24 Or kind of my scenario, going back, if we
25 just agreed that a bank robbery happen and I had no intent

1 at all of Mr. Shook shooting and killing somebody, even
2 though he did it in furtherance of that crime, if I should
3 have anticipated, then I could be found guilty of capital
4 murder and face the death penalty.

5 And it sounds like it's kind of that
6 second scenario, that conspiracy accomplice, that you just
7 disagree with it and think the death penalty shouldn't be
8 available. Is that kind of what I hear you saying?

9 A. Yeah. Unless you both conspired to go in and
10 say, we're going to shoot him.

11 Q. Yeah. The conspiracy that we had was just to
12 rob a bank. I had no intent at all.

13 A. You had no intention that -- you didn't know
14 he was going to go in and shoot him.

15 Q. Uh-huh.

16 A. So, no.

17 Q. A lot of people draw the same line you did for
18 that type of an accomplice. We just take the death penalty
19 off the table. I just, you know, I may give him a life
20 sentence, but I would never give him the death penalty like
21 I might the person who actually pulled the trigger or
22 somebody who intended the murder would happen. Is that kind
23 of what I hear you saying?

24 A. Yes.

25 MR. WIRSKYE: Ms. Patterson, give me just

1 a second. I think we have an agreement, Judge.

2 THE COURT: Ms. Patterson?

3 PROSPECTIVE JUROR: Yes, sir.

4 THE COURT: You couldn't get past
5 question No. 1. The parties have agreed this case is not
6 for you. We appreciate your time and service coming down.
7 We thank you for participating and next time around you will
8 say, well, I got to the second round on a capital murder
9 case, but I didn't get chosen. So we'll find another case
10 for you sometime.

11 PROSPECTIVE JUROR: Thank you.

12 THE COURT: Thank you.

13 [End of Volume]
14
15
16
17
18
19
20
21
22
23
24
25


1 STATE OF TEXAS *

2 COUNTY OF DALLAS *

3 I, NANCY BREWER, Official Court Reporter for the 283rd
4 Judicial District Court, do hereby certify that the above
5 and foregoing constitutes a true and correct transcription
6 of all portions of evidence and other proceedings requested
7 in writing by counsel for the parties to be included in this
8 volume of the Reporter's Record, in the above-styled and
9 numbered cause, all of which occurred in open court or in
10 chambers and were reported by me.

11 WITNESS MY OFFICIAL HAND on this the 4 day of

12 March, 2004.

13
14
15 
16 NANCY BREWER, CSR, NO. 5759
17 Expiration Date: 12-31-04
18 Official Reporter, 283rd JDC
19 Frank Crowley Crts. Bldg. LB33
20 133 No. Industrial Blvd.
21 Dallas, TX 75207
22 (214) 653-5863
23
24
25

REPORTER'S RECORD

74851

VOLUME 13 OF 61 VOLUMES

TRIAL COURT CAUSE NO. F01-00328-T

STATE OF TEXAS * IN THE DISTRICT COURT
VS. * DALLAS COUNTY, TEXAS
PATRICK HENRY MURPHY, JR. * 283RD DISTRICT COURT

INDIVIDUAL VOIR DIRE

FILED IN
COURT OF CRIMINAL APPEALS

MAR 9 2004

Troy C. Bennett, Jr. Clerk

On the 9th day of September, 2003, the following
proceedings came on to be heard in the above-entitled and
numbered cause before the Honorable Vickers L. Cunningham,
Sr., Judge Presiding, held in Dallas, Dallas County, Texas.

Proceedings reported by machine shorthand.

ORIGINAL

A P P E A R A N C E S

APPEARING FOR THE STATE

Mr. Toby Shook
SBOT NO. 18293250
And
Mr. Bill Wirskye
SBOT NO. 00788696
Assistant District Attorneys
133 No. Industrial Blvd.
Dallas, Texas 75207
Phone: 214/653-3600

APPEARING FOR THE DEFENDANT

Ms. Brook Busbee
Attorney at Law
SBOT: 03488000
703 McKinney Ave. Ste. 312
Dallas, TX 75202
214/754-9090

Mr. Juan Sanchez
Attorney at Law
SBOT: 00791599
5630 Yale Blvd.
Dallas, TX 75206
214/365-0700

PROSPECTIVE JUROR INDEX

<u>PROSPECTIVE JUROR</u>	<u>CRT.</u>	<u>STATE</u>	<u>DEFENSE</u>	<u>VOL.</u>
Michael Collins	4	5	35	13
Clarence Davis	42	43		13
Christopher Thompson	46	49	71	13
Antwanette Coleman	75	77		13
Wayland Taylor	85	88		13
James Nelson	99	101	133	13

P R O C E E D I N G S

THE COURT: Mr. Collins.

[Prospective juror in]

THE COURT: Good morning, sir, how are you?

PROSPECTIVE JUROR: I'm fine.

THE COURT: Welcome to the 283rd and thank you for being here on time. As my letter said, we do like to start on time. Have you had an opportunity to read the orientation guide I provided for you?

PROSPECTIVE JUROR: Yes, Your Honor.

THE COURT: That's a lot of information to give someone first thing in the morning and you don't at this point need to completely understand everything. The lawyers will go over with you some examples and try to help you understand how the law interrelates and how to apply the law.

This is as informal a proceeding as we can manage. Sometimes people get nervous when they are up on the witness stand and it's not intended to be that way. The only way that we can visit with you and be sure that you -- at the end of the process, two questions that I have to ask are, do you understand the law? And if you understand the law, can you follow the law? And that's the objective here.

1 The only question I have before we begin
2 is, you saw the trial date in this case shall be the 10th
3 day of November and for two weeks. Can you serve this Court
4 for those two weeks?

5 PROSPECTIVE JUROR: Yes.

6 THE COURT: And do you have any questions
7 of me before we begin?

8 PROSPECTIVE JUROR: No, sir.

9 THE COURT: Mr. Wirskye, you may inquire.

10 MR. WIRSKYE: May it please the Court.

11 MICHAEL COLLINS,

12 having been duly sworn, was examined and testified as
13 follows:

14 DIRECT EXAMINATION

15 BY MR. WIRSKYE:

16 Q. Mr. Collins, how are you this morning?

17 A. Just fine, thank you.

18 Q. My name is Bill Wirskye and I'll be the
19 Assistant District Attorney that's going to be visiting with
20 you for the next few minutes. Just to introduce everyone in
21 the courtroom, this is Toby Shook to my left. He's the lead
22 prosecutor in the case. The defense lawyers, Brook Busbee,
23 Juan Sanchez. At the end of the table is the person
24 accused, Patrick Murphy.

25 A. Good morning.

1 Q. What I would like to do with you is maybe
2 visit a little bit about some of the information that you
3 were kind enough to put down on our extensive questionnaire
4 and talk with you a little bit about some of your thoughts
5 on the death penalty and then finally visit a little bit
6 about the law that applies in death penalty cases. You are
7 in sales; is that right?

8 A. Yes, sir.

9 Q. Okay. Do you travel a lot or are you mainly
10 in town?

11 A. I travel probably five weeks out of six.

12 Q. Okay. Do you think -- again, the Judge asked
13 you, but do you think it would cause any major, major
14 disruptions in your work schedule if you had to be a juror
15 for two weeks in November?

16 A. With knowing that it's in November and that
17 it's two weeks, I'm quite certain my employer will work with
18 me on it. Much longer than that, would be difficult only
19 from the point of view that it's commission sales and it's
20 -- if I don't do it, I don't get paid, so --

21 Q. That's what we anticipate, usually about two
22 weeks. It may be less, actually, than the two-week time
23 period. How long have you been in that line of work?

24 A. All total, probably 20 years -- 18 years,
25 something like that. I was in manufacturing before that.

1 Q. Okay. And before that looks like maybe the
2 military?

3 A. I was in the military.

4 Q. What branch of the service?

5 A. Army.

6 Q. And your wife is a teacher in Richardson; is
7 that right?

8 A. That's correct.

9 Q. I have two nephews that are going out there.
10 What school does she teach at?

11 A. Brentfield Elementary.

12 Q. What did you think when you got our phone call
13 or a letter that said that you need to come in for the
14 individual interview?

15 A. Well, I mean, it was stated that that would be
16 the next step that all of us that filled out the
17 questionnaire would then be called for individual voir dire
18 and so I wasn't that surprised, although the original date
19 that I was scheduled was last week and actually I was
20 scheduled to travel out of the country and the Judge was
21 kind enough to give me an extension to this week.

22 Q. We don't actually talk to everybody that
23 filled one out. That's kind of why we go through the
24 process. So in a sense, I guess, you are one of the select
25 few that gets to come down here and visit with us

1 individually.

2 A. Okay.

3 Q. Let me ask you, generally you told us that you
4 are in favor of the death penalty. I'm curious what purpose
5 you think it serves in our society having the death penalty?

6 A. Well, I do believe it to be a deterrent,
7 except in those cases where individuals simply aren't
8 motivated by deterrence, perhaps they don't have no regard
9 for themselves or others and those particular cases I kind
10 of feel that those people are of such a disposition socially
11 or mentally or morally to the point where they are probably
12 going to be a threat to society anyway.

13 Q. Okay. And I know -- I don't think you have
14 your questionnaire in front of you.

15 A. I do here.

16 Q. Okay. I know it's been a while since you
17 looked at it, but at one point, I believe it's on page 4, we
18 asked you to kind of rank yourself how strongly you feel in
19 using the death penalty on a scale of 1 to 10 and you gave
20 yourself a 9?

21 A. That's correct.

22 Q. Which is toward the high end of the scale and
23 I'm curious kind of what that means to you or if you can put
24 it into words.

25 A. Okay. I do not -- I don't -- once an

1 individual is convicted and has had the appeal process in
2 front of them and all of that appeal, all those numerous
3 appeals, I mean, I don't know what the statistic is, but it
4 seems to me like there are endless numbers of appeals
5 associated with it. By the time they reach that last stage,
6 I believe that it's warranted and it's time. I don't like
7 to reduce it to economics, but the economics of jailing
8 people forever or the balance of their life versus the
9 economics of going ahead and getting this thing over with,
10 makes a lot of sense to me as well.

11 Q. Okay. We obviously ask you a lot of questions
12 on the death penalty. Towards the bottom of page 4, the
13 next to last question, what would be important to you in
14 deciding whether a person received the death sentence or a
15 life sentence, you said the circumstances and the subject's
16 state of mind. I was kind of curious what you meant by
17 that.

18 A. The circumstances are obvious, a heinous
19 crime, something like that. But the state of mind, if it
20 was an impulse, if it was, you know, a reaction of some kind
21 that absolutely had no thought, no -- the word
22 "premeditation" or something like that involved in it, I
23 think I can understand that, even not necessarily understand
24 the crime, but understand the circumstances, and would be
25 less likely to vote in favor of death in that particular

1 situation.

2 Q. Where it wasn't premeditated, that type thing?

3 A. Exactly, yeah.

4 Q. We also ask people, I hate to back up on you,
5 but I think it's on page 2, we ask people to give the best
6 argument for the death penalty and the best argument
7 against. And I never know how strongly people subscribe to
8 those two views or whether they are just kind of in the
9 abstract, giving what they consider the strongest argument.
10 And you said the best argument against the death penalty is
11 that many consider the death penalty to be State sanctioned
12 murder. And I'm curious if that's something you believe in
13 or you think that's the best argument against it?

14 A. That's exactly what the question was and that
15 was my answer. That's probably the best argument against
16 it. No, I don't believe it.

17 Q. We also asked you some questions about the
18 criminal justice system and the first thing that pops in
19 your mind when you think about the Assistant District
20 Attorney and you said politicians. I'm just curious where
21 that comes from.

22 A. Sitting in front of a room full of attorneys,
23 okay.

24 Q. Mr. Shook and I are both career prosecutors.
25 I don't think that we have political aspirations. I'm just

1 curious where that comes from.

2 A. You get a little bit cynical about the system
3 sometimes from the point of view that -- and maybe a lot of
4 television has a lot to do with it, I'm not really sure.
5 But if you look at who the politicians are, I don't know,
6 four out of five of them are probably attorneys. Who the
7 lawmakers are, four out of five are attorneys. And if you
8 get to the point where you need an attorney, you damn well
9 better be able to afford it.

10 So it sort of equates to a system that is
11 sometimes self-defeating. I've had situations where I
12 thought that, quite frankly, the situation ought to be
13 resolved. These are civil matters, typically, ought to be
14 resolved between the individuals. But you can't do it. You
15 have to go out and spend the money to hire an attorney,
16 etc., etc.

17 So you get a little frustrated in the
18 attorney system in that it seems to be self-perpetuating
19 from a perspective that it's like you are at one stage of
20 attorneys and the next stage of attorneys are feeding the
21 information to the next. So, anyway, that's the reason.
22 Sorry. You asked.

23 Q. That's why we asked you. You sound a lot like
24 my father who claims his worst day was the day I decided to
25 go to law school. If my dad made this jury, he would have

1 that cynical jaundiced eye against both sides, just because
2 we're attorneys. Is that something that either side --

3 A. Yes. I have no particular feeling one way or
4 the other, about which attorneys are which.

5 Q. No side is better than others?

6 A. No, not necessarily.

7 Q. We're not going to have to start with kind of
8 a black mark on our side just because we are attorneys?
9 Either side?

10 A. No.

11 Q. Okay. You also told us your dad, I think, was
12 a psychiatric social worker?

13 A. That's correct.

14 Q. What type of work did he do?

15 A. Well, dad is -- let's go back. He was a
16 career Army NCO. Retired from that, went back to school and
17 got his degree, became a psychiatric social worker, worked
18 in juvenile probation during -- in fact, did his masters on
19 high school dropouts and juvenile probation analyses there.
20 But he worked mostly with the United Way. He was an
21 executive director with the United Way Chapter in San
22 Antonio, usually with family counseling.

23 Q. Did he have any involvement in the criminal
24 justice system or anything like that?

25 A. Only when he was in the juvenile probation

1 business which was during, I think, the last year of his
2 thesis. I was in high school at that time.

3 Q. Anything about that you think would affect
4 you, jaundice you, or make you cynical about the system?

5 A. No.

6 Q. Again, we ask if anyone that you know had any
7 contact with the system and you mentioned, I believe, a
8 nephew?

9 A. I have a nephew who is -- has been in and out
10 of the system. He's out on probation right now. He's had
11 an alcohol problem and as a result has chalked up a record.
12 And it's -- I can't, you know, I don't really have any
13 feeling that he was mistreated in any way, unless you want
14 to talk about the probation system. But he's -- he did some
15 wrong things.

16 Q. Okay. Obviously, both sides are -- we just
17 want people to be honest. And our worst fear, either side,
18 is getting somebody over there that has a hidden agenda or
19 an axe to grind with either side. Anything about that
20 experience with your nephew --

21 A. No.

22 Q. -- have a lingering mistrust with either side?

23 A. No, like I said, unless you want to talk about
24 the probation system a little bit, but it wasn't too -- and
25 my feeling on that was that a great many people were getting

1 released by the State that had truly significant crimes as a
2 matter of overcrowding, and yet he couldn't get a -- he
3 didn't do that much in terms of -- he didn't do anything
4 violent. Let's put it that way. And he spent an awful lot
5 of time in jail while other people were getting released.
6 But that's the probation system.

7 Q. You also told us, I believe -- I'm on page 5.
8 We kind of gave you a series of statements, gave you the
9 statement, asked if you agree or disagree strongly and that
10 type of thing. One of the statements was most criminals are
11 actually victims of society's problems and you marked down
12 that you generally, I guess, agreed with that statement?

13 A. I think so. In that somewhere else in the
14 questionnaire you asked me the question about whether or not
15 I thought crime is on the increase and I think I indicated
16 yes, although recently I think statistics indicated no. I
17 think that social pressures create temptations. And when
18 the pressures get too great, people make bad judgments and
19 unfortunately, oftentimes, those bad judgments are criminal
20 in one way, shape, or form, and ends up perpetuating the,
21 you know, the criminal system, shall we say.

22 Q. Okay.

23 A. You know, I think that -- I don't think that
24 the average citizen who gets in trouble is violent. I don't
25 know, I might be wrong. I haven't done any statistical work

1 on that, so it's just my impression.

2 Q. And we also ask you if the criminal justice
3 system fairly protects the rights of persons accused of
4 crime and you put uncertain. I'm curious what you meant by
5 that.

6 A. Um, I don't think I know enough about it, to
7 be honest with you. I presume that they do, because the
8 appeals process, but, you know, you hear stories and I don't
9 know any particular story, but you hear where, you know, the
10 police have intimidated someone or, you know, extracted a
11 confession or some kind of thing like that where later it
12 comes out that they misused their authority and their
13 position or whatever. I guess I presume that things like
14 that happen, so I'm not sure that they did.

15 Q. Would that be a concern of yours going into a
16 case such as this where so much is at stake where the State
17 is seeking the death penalty?

18 A. I guess it's always a concern, but I'm not
19 sure. I don't know any -- I don't know anything about that
20 having happened in this particular case. All I know about
21 this case is what I've read in the newspaper.

22 Q. Let's talk about that. A case like this that
23 is so high profile, everybody we talked to, just about, has
24 heard something. What exactly do you recall hearing about
25 this case?

1 A. Obviously, the details, you know, that were in
2 the paper about the escape, the confrontation in the parking
3 lot, the fact that Officer Hawkins was shot and shot and run
4 over and shot at close range numerous times, things that
5 make it sound like it was an awful lot of intentional,
6 harmful activity going on at that particular point in time.

7 Q. Let me tell you what the law is and kind of as
8 we visit during the rest of my time, I will probably be
9 telling you what the law is --

10 A. That's fine.

11 Q. -- and asking you if you can follow it,
12 because that's basically what the process is. The law
13 doesn't require that we get twelve people who haven't heard
14 anything about it. What the law says, basically, even if
15 you have heard something about the case, even if you may
16 have formed some impressions or opinions, as long as you can
17 set those aside and -- not forget about them, but set them
18 aside and base your verdict on the evidence in the
19 courtroom, the facts and evidence that you hear here, you
20 would be a qualified juror.

21 Is that something that you think you can
22 do, just base your verdict on the evidence that you hear in
23 the courtroom?

24 A. I think so. You know, how do you eliminate
25 something that's already in your mind? To the extent that I

1 can do that, I would do that.

2 Q. I don't know. Sometimes it's unnatural or
3 kind of goes against human nature. And I think that's what
4 the law recognizes. We don't ask you to forget about it.
5 We just ask you to base the verdict, you know, whether a
6 person is guilty and answer these three questions just on
7 what you hear in the courtroom.

8 A. Sure.

9 Q. And if you can do that, you would be a
10 qualified juror. And, frankly, some people tell us they
11 just can't. They have heard too much about it. Sounds like
12 you think you can do that; is that right?

13 A. I would try, let's put it that way. That's
14 about the best I can tell you. I've never had to do it, so
15 I'm not sure either way, but I believe so.

16 Q. I hate to sound too much like a lawyer, but if
17 I don't, they will or the Judge will. We kind of deal down
18 here in a world of yes and no sometimes. If I had to get a
19 yes or no from you on that question, do you think that you
20 could base your verdict just on what you hear in the
21 courtroom --

22 A. Yes.

23 Q. -- and not -- okay. Fair enough. You told us
24 a little bit about how you feel about the death penalty and
25 we talked to a lot of people, a lot of people that seem to

1 feel very strongly about it, maybe as you do, giving
2 yourself a 9 out of 10. But under certain scenarios those
3 people draw lines.

4 What I mean by that is this. I think we
5 oftentimes think of a crime happening and being one lone
6 criminal maybe going into a 7-Eleven, holding someone up,
7 committing the murder, and trying to get away. But
8 probably, as you well know or can imagine, oftentimes crimes
9 are committed by groups or gangs of people, more than one
10 person.

11 And in the context of capital murder,
12 when there are a lot of people who feel very strongly about
13 the death penalty, but would just reserve the option of the
14 death penalty just for the person that actually pulled the
15 trigger, the triggerman, or the person that actually caused
16 the death.

17 A lot of people would kind of draw that
18 bright line. And for people who are nontriggermen or what
19 we call accomplices, sometimes, people that didn't actually
20 cause the death, they take away that option of the death
21 penalty for those people for a lot of different reasons, but
22 mainly because they didn't actually cause the death. They
23 are fine with it on the triggerman, but like I said, when it
24 comes to an accomplice, they may sentence them to life or a
25 whole lot of time in the penitentiary, they just don't think

1 that the death penalty should be an option for those
2 accomplices. How do you come down on that issue?

3 A. I believe the question is option. It should
4 be an option. But the decision would have to depend --
5 would have to depend upon the circumstances of that
6 individual's involvement. If that individual was, in fact,
7 a bystander, had no intention, no involvement, but his
8 associates took it upon themselves to do it, then the death
9 penalty may not be appropriate.

10 Q. So you wouldn't necessarily or automatically
11 take the death penalty option off the table for those
12 accomplices?

13 A. No.

14 Q. You would look at their role in the crime, I
15 guess?

16 A. No -- yes, I'm sorry.

17 Q. Let me give you a hypothetical or scenario and
18 see what you think. Let's say Mr. Shook and I get together
19 and we decide we're going to rob a bank. We kind of recruit
20 a third friend to be the getaway car driver. We have one
21 pistol. The plan is for Mr. Shook to take the gun in, hold
22 up the teller. I'm going to go in with the bag and collect
23 the money while he's holding everyone at bay. And we have
24 our getaway car driver out front. Never goes in the bank.
25 He's just sitting there watching for the police, tap the

1 horn or something if the police come. And that's the
2 agreement. That's our plan.

3 And as we go to do that robbery, for
4 whatever reason Mr. Shook shoots and kills the teller.
5 Maybe sees him going for a silent alarm or I see him going
6 for a silent alarm and tell him. But he shoots and kills
7 the teller during the course of that robbery. He's
8 committed a capital murder, an intentional murder, in the
9 course of a robbery.

10 Depending on the facts and circumstances,
11 as we've talked about, I could also be found guilty of
12 capital murder for my participation and, depending on the
13 answers to the questions, I could potentially receive the
14 death penalty.

15 What do you think about somebody in my
16 position, the bag man, somebody like that?

17 A. You knew about the gun?

18 Q. Yes.

19 A. You knew it was loaded?

20 Q. Yes.

21 A. You're in.

22 Q. What do you think about the guy, the getaway
23 car driver, out front?

24 A. Same questions. If he -- if the three of you
25 planned the contingency for violence and premeditation, then

1 I think you all three are equally guilty.

2 Q. Okay. And that's basically what the law is.
3 Just kind of a followup, if you will, on a point that you
4 made earlier talking about the bystander. If Mr. Shook and
5 I tricked our friend to driving us up there --

6 A. Right.

7 Q. -- we said, hey, we need to go to the bank and
8 make a withdrawal and don't tell him what type of withdrawal
9 we're making, you know, he really is that innocent
10 bystander, just because he's there or just because he's
11 present, he couldn't be guilty of anything.

12 A. That's correct.

13 Q. I want to point that out. What the law
14 recognizes is if I helped, aid, or directed him to commit a
15 capital murder, I could be held accountable for it, too.
16 I'm on the hook for it.

17 Or the second way that I could be found
18 guilty of capital murder is the scenario we talked about.
19 If we get together and enter into a conspiracy or an
20 agreement to commit a bank robbery and a capital murder
21 happens in the course or furtherance of that and I should
22 have anticipated that that could have happened and a life
23 could be taken, then I'm on the hook for capital murder.
24 And that's basically what the law says. If I should have
25 anticipated that a life could be taken, I could be found

1 guilty of capital murder and potentially face the death
2 penalty.

3 It sounds pretty much exactly where you
4 are, kind of in accord with the law?

5 A. I would agree with that.

6 Q. And I think it's a pretty common sense deal.
7 The reason that I go into this and belabor this, is because
8 just to put our cards out on the table, we're prosecuting
9 Mr. Murphy as an accomplice, as a nontriggerman, in this
10 case. And that's why we spend so much time talking about
11 it.

12 But it sounds like you would be able to
13 follow that law and just kind of look at the facts and
14 circumstances and you wouldn't automatically take the death
15 penalty off the table; is that right?

16 A. That is correct, yes.

17 Q. As you probably learned from reading the
18 pamphlet, the only crime for which you can -- the death
19 penalty is available as an option in Texas is murder and
20 then only a certain subset of murders. If you kill a
21 particular person, a police officer, fireman, prison guard,
22 or a child under six, or commit an intentional murder in the
23 course of another felony like robbery that we talked about,
24 those are the only crimes, that subset of murders, is the
25 only crimes where the death penalty would be available.

1 And in a case such as this where we're
2 seeking the death penalty, we don't ask a jury just to write
3 in life or death. We have this sentencing scheme with the
4 three Special Issues that I think you probably have had a
5 chance to look over. And we let the answers to these three
6 questions, whatever the jury -- however the jury answers
7 these, to determine the appropriate sentence in the case.

8 I know you probably looked at them
9 already, but if you could just take a few minutes and read
10 those to yourself, all three. They are phrased a little bit
11 differently, I think, up on the board.

12 A. (Prospective juror complies.) Okay.

13 Q. And depending on the answers to those
14 questions, determines the appropriate sentence. The first
15 phase of the trial, called the guilt/innocence phase, and
16 you as a juror would just be concerned with whether he did
17 the crime that he's charged with or not. Another way to
18 look at it is did we meet our burden, did we prove to you,
19 as a juror, beyond a reasonable doubt that he's guilty of
20 capital murder?

21 If you find that he is guilty of capital
22 murder, we go into that second phase or the punishment phase
23 of trial. The rules of evidence kind of expand or broaden.
24 You get to hear a little bit more about his background, a
25 history, whether he's good, bad, that type of thing. And we

1 expand those rules of evidence to allow you, as a juror, to
2 kind of answer these questions.

3 What the law requires, basically, is that
4 you have got to start that second phase as a juror with an
5 open mind. You can't go in and just automatically answer
6 these questions in such a way or based on the fact that you
7 found him guilty of capital murder. You have to keep that
8 open mind when you start that second phase.

9 The first question or Special Issue
10 basically talks about whether the person is going to be a
11 future danger to society, a continuing threat, that type of
12 thing. We kind of ask a juror to make a prediction about
13 future events. Some people are uncomfortable with that,
14 trying to make that prediction.

15 Is that something that you feel you could
16 do, given enough information?

17 A. Yes.

18 Q. Okay. The words aren't necessarily defined
19 for us. Unlike most things in law, we don't have legal
20 definitions. But the word "probability" in that question,
21 what does that mean to you, kind of off the top of your
22 head?

23 A. "Probability" versus "possibility."
24 "Possibility" indicates to me some chance. "Probability"
25 indicates a high percentage of certainty.

1 Q. And that's typically what we hear. Anything
2 is possible, I guess. Probability, a lot of people talk
3 about it in terms of more likely than not, 51 percent of the
4 evidence, maybe, that type thing.

5 A. Well, in this particular case, I think more
6 than 51 percent.

7 Q. Why do you say that?

8 A. Well, because you are making a life decision
9 and the term "continuing threat to society", is this person,
10 not -- can this person not be rehabilitated, meaning if they
11 could be rehabilitated, is this an individual that you want
12 back out on the street?

13 Q. Okay. Would you read that to be just kind of
14 high probability?

15 A. High probability.

16 Q. And that's kind of the way you would read it?

17 A. Yes.

18 Q. Okay. All right. When we talk about criminal
19 acts of violence, again, that's not particularly defined for
20 us. The law leaves it up to the jury to use their common
21 sense. And what does that mean to you when you see that
22 phrase "criminal acts of violence"?

23 A. Um, violence to me is harm to another person
24 versus harm to property. Violence can be harm to property,
25 obviously, in that somebody gets worked up and does it, but

1 in the context of the criminal system, I would take it to
2 mean harm to another person and the degrees of violence
3 escalating to ultimate violence being death and how much --
4 what degree of violence was initiated on or perpetrated on
5 the victim leading up to that death.

6 Q. Okay.

7 A. In other words, was it a, you know, your bank
8 teller situation, spontaneous bang and he's dead, or was it
9 tie him up and torture him for ten days and ultimately kill
10 him? Those are the two extremes.

11 Q. When you look at that question and you know
12 you are kind of making a prediction about future behavior,
13 is it a situation where you are going to -- and we have the
14 burden of proof on this question, the State does, they don't
15 have to prove anything to you.

16 Would you want us to prove to you there
17 is a high probability that, you know, he may be involved in
18 another murder or something like that?

19 A. Well, threat to society indicates that, yeah.
20 You would have to prove that -- not necessarily murder, but
21 that he's going to continue to be, he or she, whatever, is
22 going to continue to be a threat to society, meaning the
23 individuals who make up society in that, yeah, if they have
24 murdered once, they may not intend to murder again, but if
25 they are prone to violence, ultimately it may lead to murder

1 again. You know, some people just don't have good control
2 of themselves.

3 Q. Okay. How would you define that word
4 "society", the last word in that question?

5 A. "Society" is the population, if you will, and
6 the entire culture made up of people. Society is people
7 versus society is institutions.

8 Q. Okay. Okay. You wouldn't limit it or define
9 it just to include people that aren't locked up. You would
10 include prison and nonprison populations in that?

11 A. Yes.

12 Q. That's what a lot of people tell us, just
13 anyone he may come into contact with, either inside or
14 outside, prison guards, teachers, counselors, that type of
15 thing.

16 Again, we have the burden on that
17 question. That first question and the second question we
18 have the burden on as well. Both start off with no answers.
19 That's kind of the default setting and it's up to us, the
20 State, to prove to you beyond a reasonable doubt that the
21 answers to those questions should be yes.

22 Again, as I mentioned, the law requires
23 that you start that second phase of the trial where you are
24 looking at these questions with the open mind. Some people
25 tell us, gee, if I found somebody guilty of capital murder,

1 I'm always going to answer Special Issue No. 1 yes just
2 because I found him guilty of capital murder. I just can't
3 have that open mind when I start the second phase and look
4 at that first question.

5 So I guess my question to you is, are you
6 going to automatically answer Special Issue No. 1 yes, just
7 because you found somebody guilty of capital murder in the
8 first phase of the trial?

9 A. Wouldn't the information provided in the first
10 phase of the trial give you some sense --

11 Q. You can certainly go back and look at that
12 information.

13 A. Yes.

14 Q. That may be all you hear. You may not hear
15 any evidence in the second part. You probably will. I
16 guess the underlying point is you just have to have an open
17 mind. You can't just say just because I found him guilty,
18 I'm going to answer it yes.

19 A. That, I would agree.

20 Q. You can always go back and look at the facts
21 of the crime to help you answer that question. In fact, I
22 think most people would probably tell you that that would be
23 the most important factor or one of the most important
24 factors in answering that question.

25 That kind of sounds like where you are.

1 You wouldn't answer it automatically or anything like that?

2 A. That's correct.

3 Q. Special Issue No. 2, that kind of deals with
4 the area we've already talked about where you have more than
5 one person involved in the crime. The question kind of
6 breaks down into three different parts. If you think the
7 person actually caused the death or he was the triggerman,
8 you would answer it yes. It would be pretty easy. If you
9 think he intended to kill the deceased or another, you would
10 answer that yes. Commonly, that's the type scenario of
11 murder for hire. Hire somebody to kill your spouse, your
12 business partner, that type of thing.

13 Then, finally, that last line on Special
14 Issue No. 2, which is what we've been talking about, did the
15 accomplice, the nontriggerman, anticipate a human life would
16 be taken? And if you will recall, in order to find -- going
17 back to my scenario, in order to find me guilty of capital
18 murder, you would have to find that I should have
19 anticipated a life would be taken. Should have. By the
20 time we get down to the second phase of the trial, the law
21 imposes a little bit higher burden on us. We've got to
22 prove not only they should have anticipated, but they
23 actually anticipated, that they did anticipate. Does that
24 make sense to you?

25 A. Yes.

1 Q. It's kind of the same inquiry. It's just a
2 little higher standard. Some people call these questions a
3 set of filters. We just run everything through to make sure
4 at the end of the process that we have reached the right
5 verdict. Again, that starts off with a no. It's our burden
6 to prove it to you yes.

7 Finally, kind of the last stop in the
8 process, what a lot of people call the safety valve or the
9 safety net is Special Issue No. 3. That's a little bit
10 different in that neither side has the burden of proof on
11 that. We just ask the juror to answer that how they see
12 fit.

13 We call it the mitigation question. We
14 ask you to look back at the crime, the defendant's character
15 and background, what sort of personal, moral culpability or
16 personal, moral blame they bear in the crime. We ask a
17 juror to look at all that and see if there's anything
18 mitigating and if there is, is it sufficiently mitigating
19 that his life ought to be spared and he should get that life
20 sentence as opposed to the death penalty? Does that kind of
21 make sense to you?

22 A. Yes, it does.

23 Q. Again, the law requires that even at this late
24 stage of the process that you can go into Special Issue No.
25 3 with that open mind. Is there anything -- I hope you

1 don't sit around thinking about this, but is there anything
2 that strikes you as mitigating in these type of cases, death
3 penalty cases? Any particular fact or factor that you might
4 think would be mitigating?

5 A. Um, you're right. I don't sit around thinking
6 about it, so, no, not particularly. I think under that
7 situation, again, you have to understand what was going on
8 and what's been going on over the course of the individual's
9 life, what led to this moment in time, and how did this
10 decision come about.

11 Q. And, you know, most common answer we get is
12 most people can't think of a thing. Sometimes we hear
13 people say, if there was a bad background, a bad upbringing,
14 history of abuse, they would consider that mitigating.
15 Other people --

16 A. Possibly.

17 Q. -- and other people tell us, no. It's not
18 really mitigating. You can overcome that. You have got
19 free will. You can make choices when you are an adult, that
20 type thing.

21 A. I go back to my statement earlier where to me
22 too many criminals are victims of society and society
23 represents -- you have people locking kids in closets, you
24 know what I mean, for years. How do you survive? How do
25 you come back normally from that kind of thing? You know

1 what I mean?

2 I think mitigating is by definition
3 something that contributes to the -- some event that
4 contributes to the total sum of events that led up to this
5 particular moment in time. I don't think that you can
6 measure any one person against another in those kind of
7 extreme situations.

8 Q. Some people tell us like drug or alcohol use,
9 if the person was high or drunk when they committed the
10 crime or maybe they were a drug addict or alcoholic, they
11 might consider that mitigating. Other people tell us, no,
12 you made the choice to get drunk. You made the choice to
13 get high. I don't really consider that mitigating and they
14 may even think it's aggravating. Where do you come down on
15 that one?

16 A. You probably read my --

17 Q. I did. That's kind of where I'm going to.
18 I'm trying to be sneaky and sneak it up on you, but it
19 didn't work.

20 A. Drugs in general, excluding alcohol, are all
21 on the list to be illegal. And as soon as you start taking
22 them, whatever they are, you've already committed the crime
23 and you know that you are headed down a bad path, you know.
24 And so, consequently, whatever you end up doing there is, I
25 think, that's not mitigating.

1 On the other hand, we're going to go into
2 the lawyer thing again, because the entire treatment of
3 alcohol by the system is it's opposites. I mean, on one
4 hand we tax it, we promote it, we do everything, you know,
5 within the system socially, etc., to encourage it somewhat,
6 but at the same time we come right back down on the
7 individual as soon as they step over the .08 or whatever it
8 is now, law.

9 Well, I think that society, meaning the
10 system, the system being politics, etc., has mishandled
11 alcohol to the extent where alcohol could be considered
12 mitigating because the individual could go down the alcohol
13 path and do something and feel like they shouldn't have been
14 there to begin with. That one is a gray area for me,
15 because it's -- they are opposites.

16 Q. How about a person's age? Some people tell us
17 if the person was younger, that might be potentially
18 mitigating.

19 A. Can be.

20 Q. The flip side of that is a lot of people tell
21 us, no, if you are old enough to be tried as an adult, you
22 know right from wrong. Sounds like you would keep an open
23 mind to that?

24 A. I would, definitely, because the definition of
25 an adult, I think, varies from individual to individual as

1 well.

2 Q. Okay. Any questions about this sentencing
3 scheme that we have, kind of how it's done? And if the
4 questions are answered yes, yes, and no, then the Judge
5 would have no discretion and he would sentence the defendant
6 to death. That's kind of the system and how it works. Any
7 questions or comments on it or observations?

8 A. No, I haven't seen it before, but it looks
9 like a good system.

10 Q. One way to look at it, I guess, is if you
11 convict someone of capital murder, they are sitting on a
12 life sentence. And the only way they get the death penalty
13 is yes, yes, and no.

14 To follow up on that, a life sentence in
15 a capital murder case in Texas means forty calendar years
16 before a person is eligible for parole. Okay? And there's
17 no such thing as life without parole in Texas. If you serve
18 as a juror, the law tells you that, that life means forty
19 before a person is eligible.

20 But then they turn back around and say
21 you can't consider that. We ask jurors to kind of assume
22 that life means life. We don't want jurors to say, you
23 know, forty years is long enough, so that satisfies me. So
24 I'm just going to throw in the towel, not consider these
25 questions, answer them in such a way that he gets a life

1 sentence. And we don't want people to say, he may make
2 parole his first time up in forty years, I'm not going to
3 run that risk, so I'm just going to not really look at the
4 evidence. I'm going to answer these questions in such a way
5 that I know he's going to get the death penalty.

6 That's what we try to avoid. We just
7 want jurors to really work through the questions. Does that
8 make sense to you?

9 A. Yes.

10 Q. Is that something that you think you can do,
11 assume life means life?

12 A. Yes.

13 Q. Mr. Collins, about two minutes ago the Judge
14 gave me the five-minute sign, so I'm winding down. Let me
15 visit with Mr. Shook real quick and see if there's anything
16 else, but we're about finished.

17 Mr. Collins, thanks for your time. I
18 enjoyed visiting with you. That's all I have.

19 THE COURT: Ms. Busbee?

20 MS. BUSBEE: May it please the Court.

21 CROSS-EXAMINATION

22 BY MS. BUSBEE

23 Q. You will be happy to know that since
24 Mr. Wirsky is so thorough and other things, I'm not going
25 to have to talk to you too much. But I do want to ask a few

1 questions and discuss a few things with you. But since you
2 see right through your lawyer tricks --

3 A. I don't know about that.

4 Q. Yeah, you do. Anyway, I was probably still
5 half asleep or my coffee hadn't kicked in. Did we ask you
6 what you sell? Did anybody ask you that?

7 A. No, they did not.

8 Q. What do you sell?

9 A. Plastic materials used in operating room
10 garments, drapes, disposable materials of that type. To a
11 certain extent some of that rolls over into the food
12 packaging, but I'm predominantly in the surgical.

13 Q. How did you get into that?

14 A. Accident. I came out of the Army in '72, came
15 off of active duty and went back to school for a while,
16 finished up my degree and was looking for a job, actually
17 looking for a job in aviation. I had been a pilot. And
18 there were not a lot of jobs available. A head hunter said,
19 why don't you go over and talk to these people? And I went
20 over and interviewed and they hired me as a plant manager
21 trainee, and happened to be a packaging, film processing
22 facility. And one thing led to another and 26 or so years
23 later, here I am.

24 Q. It must have turned out well. I noticed you
25 have been in Vietnam. What did you do in Vietnam? Were you

1 in combat?

2 A. I was Army helicopter pilot for attack
3 helicopters.

4 Q. I should have figured that out. Did you do
5 one or two tours?

6 A. One tour.

7 Q. I want to ease your mind about something, just
8 FYI, the appeals process is lengthy on a lot of things. But
9 in 1995 the federal government changed a lot of those
10 procedures. I mean, it did used to be unbelievable. You
11 would -- I once counted it up, because I had the unfortunate
12 job of handling one once, and once counted it up and it went
13 1, 2, 3, 4; 1, 2, 3, 4, the direct appeal, and you could end
14 up appealing like eight or nine times under the old system
15 and numerous times. All these you read about last minute
16 appeals to the Supreme Court and whatnot. And if they
17 granted it, it started all over again.

18 In 1995 the federal government, believe
19 it or not, came up with kind of a scheme that would balance
20 the rights of the defendant against, you know, perpetual
21 appeals. So that's been limited to one course up the
22 ladder, because at the same time there were two types of
23 bills, for what that's worth. So that's not as outrageous
24 as it used to be, but the process is still there.

25 You talked about and you mentioned, I

1 think twice in your questionnaire, your friend that was
2 killed in -- was a San Antonio police officer?

3 A. That's correct.

4 Q. Was anybody prosecuted for that?

5 A. The driver of the vehicle -- actually two
6 officers were killed that night, George and his partner,
7 were both killed by a drunken driver. He was -- I don't
8 know that -- I don't know the final outcome, let me put it
9 that way. There was some initial prosecution. There were a
10 number of extenuating circumstances. And to my knowledge,
11 no, he was never convicted of anything.

12 Q. I've written down all these things that I was
13 going to ask you but Mr. Wirskye went over them and I see no
14 point in asking you the same things or extending this
15 further for no particular reason.

16 Is there anything that we didn't ask you
17 that you thought we would ask you or you wish you had put on
18 your questionnaire or any thoughts you have on serving on
19 this jury?

20 A. No.

21 Q. To me you understand the scheme and you have
22 got it down, so --

23 MS. BUSBEE: Your Honor, I would have no
24 other questions of this juror.

25 THE COURT: Thank you, sir. If you

1 would, wait for us outside and we'll have you back in just a
2 minute.

3 PROSPECTIVE JUROR: Thank you very much.

4 [Prospective juror out]

5 THE COURT: What says the State?

6 MR. SHOOK: State has no challenge.

7 MS. BUSBEE: We have no challenge.

8 MR. SHOOK: State accepts.

9 MS. BUSBEE: We'll accept.

10 THE COURT: Ask Mr. Collins to come back
11 in, please.

12 [Prospective juror in]

13 THE COURT: Thank you. You may be
14 seated. Mr. Collins, looks like you are going to need to do
15 some scheduling for us.

16 PROSPECTIVE JUROR: Okay.

17 THE COURT: The parties have accepted you
18 as juror in this case. And what we're going to be doing is
19 I have documentation here I need you to fill out for me.
20 This is your personal information where we can contact you.
21 I need contact information there for another person. This
22 information is retained by me in this computer. As I have
23 told the group, the questionnaires you fill out, when we're
24 through with them, I order the District Clerk, they take
25 them out to West Texas and they burn them.

1 So, I mean, I'm real, real deliberate
2 about the security. This information will be maintained by
3 myself and the Sheriff. So you don't have to worry about
4 that. I have some supplemental juror instructions. Because
5 as soon as you go back to the office and you tell them, I
6 need to work two weeks off in November 10th and 17th, first
7 thing they want to know is, well, what for? And you tell
8 them, I'm on a capital murder case, they are going to give
9 you their opinion.

10 PROSPECTIVE JUROR: Yes.

11 THE COURT: And the lawyers are very
12 satisfied with your opinions. So obviously you have to plan
13 ahead. We're doing this far enough out where people like
14 you can arrange your schedules.

15 We will be having an orientation. Once I
16 get all the jurors selected in this case, I'm going to have
17 everybody back down here for about an hour's worth of
18 housekeeping, if you will, hopefully the week prior to the
19 10th of November. For you, with your travel schedule, I
20 will try to arrange it far enough out. I don't know what
21 date that will be, but I'll try to schedule it as soon as I
22 can to let you know you need to be here on that day as well.

23 The idea is once -- the Sheriff is going
24 to go over with you today some housekeeping things, but I
25 can't do it until I get the whole group. I can't do some

1 other things. So the idea is to get as much done as quickly
2 and as soon as possible.

3 If you learn one thing, when I say 8:30
4 -- where were you at 8:30?

5 PROSPECTIVE JUROR: I was here.

6 THE COURT: It's not like going to the
7 doctor's office and show up -- the other folks, as I told
8 them, I have three people. The other folks will be in. You
9 are here first, you are on time, you come in. I start on
10 time. If there's one thing you can count on -- makes the
11 lawyers -- I push them. We're going to start and not waste
12 your time.

13 So I have some instructions. It's real
14 important, extremely important, that you do not go out and
15 educate yourself about anything about this case or anything
16 that has previously been written in the newspaper or on the
17 Internet. Just, if you tell somebody you are on this case
18 and it starts two months from now, they are going to talk to
19 you about it. Don't do it. Your employment, say I have to
20 arrange jury duty for two weeks and leave it at that.

21 PROSPECTIVE JUROR: Okay.

22 THE COURT: Fair enough?

23 PROSPECTIVE JUROR: Fair enough, sir.

24 THE COURT: Sheriff? Go with the Sheriff
25 and she'll take you back here to the back and complete some

1 other documentation with you and we'll see you sometime the
2 week before November 10th. I'll let you know as soon as I
3 can.

4 PROSPECTIVE JUROR: Thank you, sir.

5 THE COURT: Thank you.

6 [Prospective juror out]

7 THE COURT: Mr. Davis.

8 [Prospective juror in]

9 THE COURT: Good morning, Mr. Davis. How
10 are you?

11 PROSPECTIVE JUROR: Just fine.

12 THE COURT: Welcome to the 283rd and
13 sorry for the delay in getting you in. Have you had an
14 opportunity to read several times the orientation guide that
15 I provided for you?

16 PROSPECTIVE JUROR: Yes.

17 THE COURT: I know that's a lot of law to
18 give someone first thing in the morning and you are not
19 expected to be able to understand it completely at this
20 point. The lawyers will go over that with you and give you
21 examples.

22 And there are two questions that I have
23 at the end of the process are, number one, do you understand
24 the law?

25 PROSPECTIVE JUROR: Yes.

1 THE COURT: And the second question is,
2 can you follow the law? That's the picture here. The
3 lawyers will spend some time with you and go over the law
4 and give you examples and be sure that you can work with it.

5 The only question that I have for you
6 before we begin is will you be able to serve this Court for
7 two weeks beginning on November 10th?

8 PROSPECTIVE JUROR: Yes.

9 THE COURT: Thank you, sir. Mr. Wirskye?

10 MR. WIRSKYE: May it please the Court.

11 CLARENCE DAVIS,
12 having been duly sworn, was examined and testified as
13 follows:

14 DIRECT EXAMINATION

15 BY MR. WIRSKYE:

16 Q. Mr. Davis, how are you this morning?

17 A. Just fine.

18 Q. My name is Bill Wirskye and I'm the Assistant
19 DA that will be visiting with you for the next few minutes.
20 And I want to talk to you a little bit about some of the
21 information that you put in your questionnaire and you were
22 kind enough to fill out for us, talk to you a little bit
23 about what you think about the death penalty, and maybe end
24 up talking about some of the laws and the rules that apply
25 in a death penalty case.

1 What did you think when you got called to
2 come back down for the individual interview?

3 A. I wasn't too happy about that.

4 Q. How come?

5 A. Well, I know quite a bit about this case.

6 Q. Okay. Through the media or personal
7 connection or --

8 A. Through the media and the newspaper, plus I
9 live in Irving.

10 Q. Well, we know -- we talk to a lot of people
11 and we recognize not everyone is a perfect juror in every
12 case. And almost everybody we've talked to has heard
13 something about the case.

14 But some people have heard so much or
15 formed opinions that are so strong, very frankly, they just
16 wouldn't be able to be a fair juror in the case. They
17 wouldn't be able to give Mr. Murphy a fair trial. They have
18 just heard too much or have opinions that are just too
19 strong, that type of thing. What have you heard about the
20 case?

21 A. Well, just about everything that's been on the
22 news and television and different people talking about it.

23 Q. Okay. Have you followed some of the other
24 trials?

25 A. No. I've read about the outcomes of them.

1 Q. Okay. You know the outcomes?

2 A. Yes.

3 Q. Sounds like you may have already formed some
4 opinions in your mind about whether Mr. Murphy is guilty and
5 what the appropriate punishment may be. Is that fair to
6 say?

7 A. Yes.

8 Q. Is it fair to say you are probably not the
9 right type juror for this case?

10 A. Yes.

11 Q. Okay. So you have formed some opinions that
12 are so strong that you've just already got a bias or
13 prejudice in favor of the State and against Mr. Murphy; is
14 that right?

15 A. Yes.

16 Q. Okay. Mr. Davis, I appreciate it.

17 MR. WIRSKYE: I think we have an
18 agreement, Judge.

19 THE COURT: Mr. Davis, I appreciate you
20 coming down this morning and they have agreed to excuse you.
21 You are free to go.

22 PROSPECTIVE JUROR: Thank you, sir.

23 [Prospective juror out]

24 THE COURT: Mr. Thompson.

25 [Prospective juror in]

1 THE COURT: Good morning, Mr. Thompson,
2 how are you?

3 PROSPECTIVE JUROR: I'm fine, thank you.

4 THE COURT: Welcome to the 283rd and
5 sorry for the delay in getting you in. We try to have three
6 folks in, in the morning, and we take them as the number the
7 computer gives us. So you have to balance waiting an hour
8 on your end, versus having ten of us wait for the next
9 person to come in. So I'm just balancing. I apologize for
10 the delay.

11 Now it's your turn and we want you to
12 feel comfortable. I know this can be somewhat of an
13 intimidating process. People tell us that they are on
14 trial. That's not anything like what it should be. But
15 this is as informal as we can get.

16 The objective here is to provide you with
17 the law, as I have done so, in the guide and, hopefully, you
18 have had an opportunity to read it a couple of times. You
19 certainly don't have to understand it right now, but the
20 lawyers will go over it with you in detail and how the law
21 interrelates in this process.

22 My job is, at the end of the process this
23 morning, is to be sure that you understand the law;
24 secondly, can you follow the law? Those are the two big
25 questions for me.

1 Only question I have for you before we
2 begin is will you be able to serve this Court for two weeks
3 beginning on November 10th?

4 PROSPECTIVE JUROR: I am not sure about
5 that question. I am starting a giant project in San Antonio
6 and when it kicks off, I need to be there for five days a
7 week. So to that extent, it should be starting sometime in
8 the next month and a half.

9 THE COURT: Let me go more in detail. I
10 see that you are vice-president of Thompson Millison
11 (phonetic)?

12 PROSPECTIVE JUROR: Development, yes.

13 THE COURT: And this is a family
14 business?

15 PROSPECTIVE JUROR: It's my father and
16 his brother's business and I work for them, yes.

17 THE COURT: Okay. Will you be changing
18 your residence from Dallas County to Bexar County or will
19 you remain a resident of Dallas County?

20 PROSPECTIVE JUROR: I would remain a
21 resident of Dallas County.

22 THE COURT: Okay. That's key number one.
23 Understanding that you are going to have obligations --

24 PROSPECTIVE JUROR: Correct.

25 THE COURT: -- but this is a family

1 business. As I told the group downstairs, and I'll tell you
2 today, everybody we put on a jury unless --

3 PROSPECTIVE JUROR: They have other
4 obligations.

5 THE COURT: -- unless they are retired,
6 it's going to interfere with something. We understand that.
7 Just like paying taxes, nobody wants to pay it. But it's
8 just something we have got to do.

9 PROSPECTIVE JUROR: Okay.

10 THE COURT: If you were seated on this
11 jury, can you go to your dad and uncle and say, the Judge
12 said I've got to be here to do this trial and you are going
13 to have to work without me. Is that possible?

14 PROSPECTIVE JUROR: It could be taken
15 care of, yes.

16 THE COURT: I understand you're -- but,
17 once again, the people who aren't busy, you know, will never
18 make the jury. That's just the way it is.

19 PROSPECTIVE JUROR: I understand.

20 THE COURT: So one thing you can count
21 on, you're a businessman, I run this court like a business.
22 It's a unique concept, but I do. I start on time. We start
23 -- the first person was in the witness chair this morning at
24 8:30. The letter gave you a specific time. We stick to it
25 and I start on time.

1 And you can use the phone during the day
2 over lunch. You are not going to be sequestered during the
3 trial. While you're hearing testimony you won't be
4 sequestered, so I won't interfere with your daily
5 communications. So you can at least be able to do that. We
6 stop, as I said, before 4:30 and 5:00 every day, so you can
7 at least go to the office in the afternoon.

8 PROSPECTIVE JUROR: Okay.

9 THE COURT: So with that we'll let
10 Mr. Shook inquire.

11 MR. SHOOK: May it please the Court.

12 CHRISTOPHER THOMPSON,
13 having been duly sworn, was examined and testified as
14 follows:

15 DIRECT EXAMINATION

16 BY MR. SHOOK:

17 Q. Mr. Thompson, my name is Toby Shook. I'm
18 going to speak with you on behalf of the State of Texas
19 today. This is Bill Wirskye. He's the other prosecutor in
20 the case. Brook Busbee and Juan Sanchez are the defense
21 attorneys and Patrick Murphy is the defendant.

22 I want to just follow up on your
23 discussion with the Judge on your work situation.
24 Obviously, a lot of people have problems taking two weeks
25 off work. No one really wants to do it, quite obviously.

1 You said that your project would be kicking off when?

2 Probably in October?

3 A. Yes. Probably end of this month or sometime
4 in October.

5 Q. Okay. As the Judge said, he's very efficient
6 and he runs the court, you know what hours you will be here.
7 The only thing he can't control is once the jurors start
8 deliberating. Obviously, he can tell them -- he can't tell
9 them to quit deliberating and send them off, but we do know
10 as best we can tell that this is going to be -- California
11 is an example I always give. For some reason, trials take
12 about five or six months out there. I don't know why. But
13 we won't be in this trial more than two weeks, maybe a
14 little less.

15 The Judge has informed you that,
16 obviously, the business excuse is not a legal justification.
17 But I know the defense wants to know this and we want to
18 know this. As best you know yourself, if you are placed on
19 the jury for those two weeks in November and your project is
20 going on, but you have time to make plans, is your mind
21 going to be -- are you going to be able to concentrate on
22 the facts of this case and make your decision based on
23 everything you hear in the courtroom or is your situation
24 going to cause you the type of pressure for your mind to
25 wander or not to concentrate? That's the bottom line.

1 Obviously, you know, most people it will
2 be a great inconvenience when you think about it. But then
3 when you look at the ramifications of this type of case,
4 they concentrate on it and they make that decision. But
5 sometimes we get folks in here that just say, the particular
6 situation, they wouldn't be able to. But we can just depend
7 on you and your honesty on that, and as far as how you know
8 your situation and the best you know yourself.

9 So the bottom line is, if you were placed
10 on the jury with that project going on, but with the type of
11 advance notice, would you be able to devote your full time
12 and attention to concentrating on this case?

13 A. I believe so, but, unfortunately, I'm not in
14 this situation. I haven't been in this situation before, so
15 I'm not positive about that.

16 Q. But you are pretty sure you can?

17 A. I can usually focus on what is at hand.

18 Q. Okay. I wanted to approach that since the
19 Judge just spoke to you about it. What I will do is talk to
20 you a little bit on your questionnaire, mostly talk to you
21 about capital murder, how you feel about that, that sort of
22 thing.

23 Obviously, you know from the Judge's
24 remarks when you were brought down the first time for the
25 questionnaire, that this is a capital murder case in which

1 the State is seeking the death penalty. Have you ever been
2 on jury duty before?

3 A. No, I have not.

4 Q. Okay. We speak -- the law prescribes since
5 this is a death penalty case, we speak to every juror
6 individually. Usually we speak to them in a group. We try
7 to get you -- at any time you have questions of us, you feel
8 free to ask. But we are just looking for your honest
9 opinions.

10 You put on your questionnaire that you
11 are in favor of the death penalty as a law. I would like
12 you to kind of follow up and tell us in your own words why
13 you favor the death penalty and maybe the purpose you feel
14 it serves society.

15 A. Um, I guess I favor it because if I don't
16 believe that someone who has committed the offense of
17 murdering someone else more than once or in special
18 situations, should have the opportunity to -- I don't know,
19 it's just my feeling, I guess, is the way it boils down to
20 it.

21 Q. Do you feel that we have to stop these type of
22 dangerous individuals who have committed certain types of
23 offenses from recommitting offenses or do you think it's a
24 just punishment for certain crimes?

25 A. I think it's more the punishment. I -- yes, I

1 don't want someone who has committed an offense to get out
2 and do it to someone that I may know or someone close to me.

3 Q. Okay. Have you always believed in the death
4 penalty as a law?

5 A. I go back and forth on it.

6 Q. What has caused you to go back and forth on
7 it?

8 A. Just the situations. I don't always know if
9 the situation deserved the death penalty in my own mind, but
10 I also don't always know the cases.

11 Q. You talking about cases that you might see in
12 the media, that sort of thing?

13 A. Correct.

14 Q. Do you recall any cases that you have followed
15 in the media?

16 A. I really don't ever follow them too closely.
17 Of course, the big ones out in California, you kind of
18 follow those, but I haven't really followed them, no.

19 Q. But as far as just being in favor of the death
20 penalty as a concept, have you always been in favor of that,
21 I guess, as an adult?

22 A. I guess the majority of the time, yes.

23 Q. Case by case, you might change your opinion,
24 but just the concept of it as a law you feel -- if it were
25 up to you, say we could make you Governor for a day and you

1 have a whole lot of power, would you have the death penalty
2 on the statutes?

3 A. I would have it available, yes.

4 Q. Okay. What types of crimes do you think the
5 death penalty would be appropriate for? When you think of
6 appropriate cases, what classification of crimes come to
7 mind?

8 A. Murder.

9 Q. Okay. In Texas the death penalty is reserved
10 for murder cases and only a particular type of murder case,
11 intentional killings, not self-defense, not an accident,
12 unjustified homicides that occur with some other aggravating
13 fact. What we're talking about is a murder that occurs
14 during the course of another felony, such as a robbery. If
15 I go in and shoot down the 7-Eleven clerk while I'm robbing
16 them, that could be a death penalty case.

17 A. Yes.

18 Q. And I believe you used to work at 7-Eleven?

19 A. Well, yes, my family is very associated with
20 7-Eleven.

21 Q. We use 7-Eleven as an example with each juror.
22 We weren't picking on you for that. But you understand the
23 situation there. You commit a felony, a robbery of the
24 clerk, that could be a death penalty case in Texas.

25 A. Yeah.

1 Q. Murder, someone breaks into someone's home.
2 That could be a death penalty case. Murder during a rape,
3 during an arson, those could be death penalty cases. Also,
4 there are specific types of victims that come under that
5 statute, such as a police officer on duty, fireman or prison
6 guard on duty, also a child under the age of six. I don't
7 know why they chose that age, but that's an age they have to
8 decide on. And then murder of more than one victim in the
9 same transaction or series of transactions, like your serial
10 killer situation or mass murderer, and, finally, murder for
11 hire, hitman does it. You hire the person that actually
12 kills the man.

13 But those are the specific types of cases
14 that have been reserved for the consideration of the death
15 penalty. Do you agree with those types of cases from your
16 own personal point of view as cases that should at least
17 come into consideration for the death penalty?

18 A. I will say consideration, yes.

19 Q. Then it would just depend on the specific
20 facts of those cases?

21 A. Correct.

22 Q. Let me talk to you about another area. When
23 we think of examples, the 7-Eleven clerk or convenience
24 store clerk, or liquor store clerk, we generally think of
25 the capital murderer as the actual triggerman and certainly,

1 actually, those people are prosecuted for it.

2 But capital murder, like any other crime,
3 can be carried out by more than one individual, from time to
4 time, groups of individuals, sometimes. Some have greater
5 roles than others, but they are all actively participating
6 in that crime. We call that the law of parties in Texas.
7 It's better known usually through the media as an
8 accomplice.

9 If people get together and commit a crime
10 together, they can all be held accountable, even if one may
11 have a greater role. In capital murder you may have a
12 triggerman, but you also may have accomplices that help him
13 accomplish that act, or that crime, and the law says that
14 they, too, can be prosecuted for capital murder and could
15 even receive the death penalty.

16 The example we often use is Mr. Wirskey
17 and I agree to rob a bank and we get another -- recruit
18 another accomplice to be our getaway driver. He drives us
19 there. He keeps the car running. We go in with guns. He
20 knows we have guns. My role is to cover the tellers. He
21 starts gathering the money up.

22 For some reason, maybe I don't like the
23 way a teller is looking at me, maybe he warns me that
24 someone is pressing the alarm, I shoot the teller, we leave,
25 and the teller dies.

1 I, obviously, could be prosecuted for the
2 death penalty, could receive it, because I'm the triggerman.
3 Under the law, because Mr. Wirskey and the getaway driver
4 helped me or my accomplices, they, too, can be prosecuted.
5 They ultimately, depending on the facts, could even get the
6 death penalty.

7 People feel differently about that law.
8 Some people are fine about the death penalty if it's applied
9 to the people that actually caused the death, the
10 triggerman. Other people draw a line and go, when we talk
11 about accomplices or nontriggermen, that's where I would
12 draw a line, personally, as far as the death penalty goes.
13 Might reserve a stiff prison sentence for these folks, but
14 I'm not for the death penalty. Other people tell us, I
15 agree with the law, depending on the facts, but if someone
16 is actively participating in that crime, they could be held
17 responsible and could get the death penalty, also.

18 But I want to approach each juror on how
19 they feel about the law of parties for the accomplice, for
20 the nontriggerman. How do you feel about that?

21 A. I draw the line.

22 Q. If it were up to you, you would reserve the
23 death penalty just solely for the triggerman?

24 A. Correct.

25 Q. And in an accomplice situation, that's where

1 you don't think the death penalty should apply?

2 A. I have a hard time doing it because in my mind
3 you don't always know that the triggerman is going to pull
4 the trigger when you go into something, even though the act
5 that they are doing I don't believe in. But it's hard for
6 me to put the blame on someone else when they pull -- the
7 trigger is pulled by someone.

8 Q. I wanted to get into that with you because I
9 know you put in your questionnaire participation and
10 actually doing, you actually wrote in your questionnaire,
11 would be very important to you and that's something that you
12 feel very strongly about, I take it?

13 A. Correct.

14 Q. And if it were up to you, would you change the
15 law in that regard and just reserve the death penalty for
16 the actually triggerman, if I could make you Governor again
17 for a day? Is that where you would be coming from?

18 A. I would probably lean more towards that idea,
19 yes.

20 MR. SHOOK: If I could have one moment,
21 Judge.

22 Q. (By Mr. Shook) I have to go just a little
23 further with you on that concept and you are entitled to
24 your opinions. That's what we want, your honest opinions.

25 Are you telling the Court, then, that --

1 the law basically is this. If you feel -- the law is if a
2 person actively -- is actively involved and they
3 participate, even though they are not the triggerman, they
4 can be found guilty and they can actually get the death
5 penalty.

6 Some people like you have an objection to
7 that and they say, that's fine. That's the law. I will
8 just tell you from the start I will find him guilty,
9 perhaps, you know, a life sentence might be fine, but I'm
10 not going to -- I'm not going to sentence anyone to death,
11 if they are not the triggerman. That's just the way I feel
12 about it.

13 And if you feel that way, that's fine.
14 We just want to know that because I want to be honest with
15 you. I can't go into the facts, but we're prosecuting this
16 defendant under that law of parties as an accomplice, as a
17 nontriggerman. So obviously we want to address each juror
18 how they personally feel about that.

19 Do you feel so strongly in that regard,
20 personal regard, that you can tell us up front, hey, it's a
21 situation where if we're talking about a situation of a
22 nontriggerman, then the death penalty is off the board for
23 me from my personal point?

24 A. From my personal point, I would probably say
25 it's about 90 percent sure I could not use the death penalty

1 in that aspect. But I don't know for one hundred percent,
2 because I have never been put in that position.

3 Q. Well, I can't preview the facts.

4 A. I understand that.

5 Q. That's kind of a tough part from my point of
6 view. We just have to ask you to be as honest as you can
7 with us and, I mean, if you are saying, yeah, I can, that
8 will be fine. We can go forward and with our evidence and
9 that sort of thing.

10 You know, everyone feels differently.
11 That's why we bring about a thousand people down, literally,
12 for this case. But you feel, then, that, then again, it may
13 be a case we put you on this jury that you could find in
14 favor and give someone a death penalty, if you think the
15 facts are for it, if they are a nontriggerman.

16 A. I still would have a problem without them
17 being the triggerman.

18 Q. Having a problem -- is it strong enough where
19 you just tell the Court, look, I can't do it? That's the
20 way I feel. I mean, if that's the way you feel, that's
21 fine. We get people that tell us they don't believe in the
22 death penalty and they are never going to do it, no matter
23 if they are the triggerman or Charlie Manson. We send them
24 on their way. We have some people that are real hesitant,
25 but then they say, I can do it, maybe. And we have other

1 people say, it's a nontriggerman, that's just the facts,
2 Judge, can't do it. But we just need you to tell us.

3 A. In my mind right now, I would have a hard time
4 ever, if it's not the triggerman. Do I know what I'm going
5 to do once I get to the final end? I've never been there
6 and I've never been put in the situation, so I don't know.
7 Right now I know that I would have an extremely hard time
8 doing it to someone who was not the triggerman.

9 Q. Couldn't envision a situation doing that?

10 A. If the -- I guess if the intent was there
11 before the situation happened that that was going to happen,
12 yes, I may be able to. But if it was something that was
13 random and someone chose to do it at that time without the
14 knowledge of the other person.

15 Q. Would it matter to you if they all had --the
16 other accomplices themselves had guns, but maybe didn't use
17 them or that sort of thing?

18 A. Um, I really don't know. I know that the
19 incidence of crime where a gun is involved is usually for
20 the threat and for the use of it, once it's -- if needed.
21 But I still don't if -- I still don't know if I could do it,
22 if it was not the triggerman.

23 Q. You still have tremendous reservations about
24 that --

25 A. Right.

1 Q. -- according to your answers. Let me go on to
2 some other areas, then. You know living here in Texas, that
3 the death penalty is actually carried out?

4 A. Yes.

5 Q. Some states, it's on the books, people are
6 prosecuted, they get on death row, but it's never carried
7 out. But in Texas it is. And that's our goal in this case.
8 We feel we have the type and quality of evidence where we
9 can convince a jury that the defendant is guilty and they
10 should answer these questions in a way that would result in
11 his execution.

12 The executions, as you probably are aware
13 of, are by lethal injection. Are you aware of that?

14 A. Yes.

15 Q. The procedures are the same. If the defendant
16 is sentenced to death in this case, he would be placed on
17 death row. At some point in time Judge Cunningham would
18 issue an actual date of execution. The day prior to that
19 date, he would be taken from death row into downtown
20 Huntsville.

21 He would go through the same process of a
22 last meal, visit with families, relatives, but at 6:00 p.m.
23 all executions take place. They would take him down a
24 hallway, put him on that gurney, I'm sure you have seen on
25 TV, put him down, strap him to the gurney, put needles in

1 his arms.

2 The warden is there. He gives him an
3 opportunity to say a few last words to any visitors he may
4 have. And then at the -- when he's finished with that, he
5 simply signals the executioner who injects poisons which
6 immediately shuts off the heart and collapses the lungs.
7 Death occurs in about 10 to 15 seconds.

8 And, quite frankly, that's our goal in
9 this case. It's one thing for jurors to tell us they
10 believe philosophically in the death penalty and it's
11 another thing once they get down here and they start
12 thinking about actually participating in this type of trial.

13 Again, we have jurors who are against the
14 death penalty and tell us from the get-go, I couldn't ever
15 sit on this type of jury and make these decisions. Put me
16 on some other type of criminal case or civil case. We have
17 other jurors who are just adamantly for the death penalty
18 and we don't usually -- they don't make the grade, either.
19 We have some that believe in it and can make the decision
20 and are comfortable making it.

21 We have other jurors who philosophically
22 are for it, feel we have to have it as a law, but tell us,
23 no, if I actually had to serve, that is something that is
24 going to weigh on my mind too much. I would think about
25 that man dying. I would think about his family. I would

1 second guess myself. I might second guess myself for years
2 and I don't want that on my conscience. I couldn't do that,
3 especially after sitting in the trial and watching him
4 sitting there looking at him living and breathing for two
5 weeks. It's just not in my heart and soul to be able to do
6 that and it's fine if you feel that way. It impairs people.
7 It would weigh too heavily on their mind when they make
8 these decisions, these fact based decisions, and they would
9 always be thinking about that and it would interfere with
10 their thought processes that way.

11 And if they feel that way and tell us
12 that, that's fine, too. But I want to tell every juror,
13 once they make it down to where you are sitting and remind
14 them how real it is and ask them as best they know
15 themselves, can they really make that type of decision, once
16 it gets down to it, if it's proven to you, or is it
17 something that you feel you really can't do, that it would
18 weigh too heavily on your mind? How do you feel?

19 A. It would definitely weigh, especially if I
20 understand from listening to you that it was the accomplice,
21 it wasn't the triggerman, it would definitely.

22 Q. Exactly. You already have expressed those
23 reservations that you cannot envision the situation where
24 you would ever give anyone the death penalty, although, of
25 course, we can't preview the facts, but that's how you feel

1 right now?

2 A. Correct.

3 Q. And this is something because of your
4 objections to that, it would -- that would weigh on your
5 mind when we put on this evidence? Is that something that
6 might interfere with your decisionmaking process?

7 A. Yes.

8 Q. And, in other words, you are not going to be
9 able to forget about it, are you?

10 A. No.

11 Q. And that -- but that would constantly weigh on
12 your mind as the evidence came in and in your decisionmaking
13 process?

14 A. Correct.

15 Q. Well, just bear with me, then, and I'll go
16 over a few other things. The law requires me to cover
17 several topics.

18 Special Issue No. 1, you don't get to
19 that unless you have found the defendant guilty. And it
20 asks whether there is a probability the defendant would
21 commit criminal acts of violence that would constitute a
22 continuing threat to society. It's asking the jurors to
23 make a prediction of the future.

24 Do you feel that you can make that type
25 of prediction?

1 A. I try to do it every day, so I imagine I can
2 do it in that case, too.

3 Q. Here's the other point I want to make.
4 Sometimes people tell us, I don't get to that question
5 unless I have found him guilty. If I find him guilty of
6 capital murder beyond a reasonable doubt, that answers the
7 question for me. Then that would be it. If someone commits
8 capital murder, then I feel they are a danger to society and
9 that's a yes for me. Other people tell us, well, I don't
10 know. It would depend on the case. Because the law is
11 this, you would have to wait and listen to the evidence.

12 Some people can do that and some people
13 tell us, quite honestly, if he's guilty in my mind, if the
14 State has gone to that burden beyond a reasonable doubt,
15 then that would be an automatic yes. How do you feel about
16 that particular question once you have found the defendant
17 guilty of capital murder beyond a reasonable doubt?

18 A. Once I found him guilty? I would probably say
19 yes.

20 Q. Okay. Because of the fact that you have
21 already found him guilty beyond a reasonable doubt?

22 A. Correct.

23 Q. You, like most jurors, have heard something
24 about this case.

25 A. Yes.

1 Q. And it was covered quite a bit in the media.
2 What -- tell us kind of what you recall hearing about it
3 when it occurred or anything you have read or heard since
4 then.

5 A. I guess living here, I heard a lot of what
6 went on at the Oshman's in Irving, and I believe everything
7 from the shooting of the police officer to the escape to
8 Colorado, I believe it was, and then finding them in -- I
9 think it was a trailer park.

10 Q. Have you followed any of the proceedings since
11 then, since the Colorado arrest? Any of the other trials?

12 A. I believe this is the last one, and besides
13 the one that did not make it out of Colorado, and each one
14 that has made it through the trial process has been found
15 guilty and received the death penalty.

16 Q. Okay. You followed it a little more than a
17 lot of other jurors, but --

18 A. I can't say I followed it, I just --

19 Q. You know more about it.

20 A. I recall it.

21 Q. Okay. My next question will be this. I maybe
22 should have asked you this from the beginning. We go
23 different ways with different jurors. Obviously, common
24 sense will tell you that the jury who has to sit here has to
25 decide the case just based on the witnesses and the law and

1 the evidence that they hear in the trial, not on anything
2 they have read or heard. This is a high publicity case, so
3 we have jurors that have followed it closer than others.

4 We have to ask each juror if they can put
5 whatever they heard out of their mind and just make their
6 decision on what they hear in the courtroom. Some jurors
7 are able to do that. I mean, they can't forget about it,
8 but they can make their decisions. Other jurors have
9 already formed opinions that might influence them in this
10 decisionmaking process because they have followed it
11 closely.

12 But only you can tell us if you can
13 follow that particular aspect of the law. Do you feel you
14 could do that? Would you be able to make your decision just
15 based on the evidence or from what you have read or heard
16 about those other five cases, would that influence you, do
17 you think, or possibly could in your decisionmaking process?

18 A. I believe I would be able to make it based on
19 the evidence. I only know of the outcome of the others. I
20 don't know what went on during them.

21 Q. Okay. You think you could follow that area of
22 the law?

23 A. Yes.

24 Q. The second question is whether the defendant
25 actually caused the death of the deceased or did not

1 actually cause the death of the deceased, but intended to
2 kill the deceased or another, or anticipated that a human
3 life would be taken.

4 That gets into that question, again,
5 about parties and that's where you have the problem, I
6 think?

7 A. Correct.

8 Q. If he didn't actually cause the death, the
9 State has to prove that he anticipated. I take it your
10 feelings haven't changed about how you personally feel or
11 your personal objections about that law?

12 A. No.

13 Q. That's the question you would really have --
14 that's the question that would cause you the problem, if you
15 actually did sit on a jury of this nature; is that right?

16 A. Correct.

17 Q. Those feelings haven't changed about your
18 personal objections not being able to sentence someone to
19 death if they are the nontriggerman then?

20 A. Well, I guess the difference between the
21 nontriggerman and anticipating are two different things to
22 me.

23 Q. Okay.

24 A. If the plan was to go in there and to take
25 someone's life, then I could probably do it for a

1 nontriggerman. But if it was not anticipated, then I have
2 an issue with it.

3 Q. What would be the major factors there for you
4 on whether someone anticipated? Does it have to be, okay,
5 let's go in and we're going to put together, show you that
6 they planned it out and said, let's murder someone? Or is
7 it a situation, well, if that opportunity arises, we can
8 take care of that situation? You understand it might be
9 tough for us to say here's what they planned because there's
10 not going to be any police officers there for the meeting
11 when they planned to do these things, obviously.

12 A lot of times we have to prove a
13 person's intent just from their actions at the crime itself,
14 that sort of thing. Some people can prove that intent that
15 way or that anticipation that way and other jurors tell us,
16 you know, you can't. How do you feel about that?

17 A. It would be, in my mind, would be very hard to
18 show me that it was anticipated, unless they went in with
19 guns blazing and if someone got in the way, then that
20 happened. But when -- if I remember the situation correctly
21 at the store, and it was on the way out that only one person
22 -- it wasn't any of the people inside to me, almost sounds
23 -- I don't know if it was anticipated or not.

24 Q. Do you think from what you know or what that
25 fact situation you just related, that that's something you

1 are going to be thinking about during your deliberations?

2 A. Yes.

3 Q. And that's just something because you have
4 followed the case, you are not going to be able to put out
5 of your mind?

6 A. No. I think it's also part of having worked
7 in a 7-Eleven, grown up with 7-Eleven, and the intent of
8 people to come in and take cigarettes from me.
9 Unfortunately, that happened to me several times when I
10 worked in there. Someone would come there and take
11 cigarettes and usually the intent was just to take them and
12 run. If you cause an issue, maybe something would happen.
13 So, of course, you are always trained not to.

14 But I have a hard time if it's not the
15 person -- anticipation isn't always there in my mind.

16 Q. And that's -- well, let me ask you this. What
17 you know, you kind of related some facts, your understanding
18 of how this crime actually occurred. Would those facts,
19 what you know about the case, would those influence you, do
20 you think, in your decisionmaking process?

21 A. Yes.

22 MR. SHOOK: That's all the questions we
23 have at this time, Judge.

24 THE COURT: Ms. Busbee?

25 CROSS-EXAMINATION

1 BY MS. BUSBEE:

2 Q. Mr. Thompson, sometimes it's just surprising
3 and gratifies me that when asking questions about the
4 capital murder scheme, jurors sometimes hone right in on
5 things obviously the Legislature was concerned about.
6 You were asked a lot of questions about your feelings about
7 certain things before we started talking about what the law
8 actually is.

9 Do you have any problem with the concept
10 that we have here in Texas, which is if you are a small part
11 or a large part of a criminal enterprise, so to speak, you
12 are as guilty, not saying the same punishment, but you are
13 as guilty as everyone else who participated in a criminal
14 act? That's the law.

15 In other words, we say, use the word
16 "party". But the law in Texas is, to use their example, the
17 getaway driver is as guilty as the robber as far as
18 committing the offense of robbery. That's the law in Texas.
19 Do you have any problem with that?

20 A. I think the getaway driver is as guilty as the
21 robber. I don't know if the getaway driver is as
22 responsible for the -- if someone gets shot inside.

23 Q. I'm coming to that. I'm coming to that.
24 Because I'm not trying -- I personally am not trying to
25 commit you to any sort of fact situation. You have some

1 knowledge from what you have read in the papers, I guess,
2 about this case. But we're really not supposed to ask you
3 what you would do in this case.

4 A. I understand.

5 Q. That's not right. At the same time, I'll get
6 to some specifics, as Mr. Shook did. But once you found
7 someone guilty of the offense, in this case of capital
8 murder, the law says that's an automatic life sentence, an
9 automatic life sentence with a special condition that the
10 person who is convicted of capital murder cannot be paroled
11 until they have served forty years, day for day, and even
12 then there's no promise that they would be paroled. But
13 that's the first time it can be considered. So that's the
14 scheme and then the law favors that.

15 And to this, in this respect, if the
16 State has elected to seek the death penalty after a jury has
17 found someone guilty of the offense of capital murder, they
18 have to do some additional things and they have to do those
19 things, the questions of proof, beyond a reasonable doubt.

20 So it's not the scheme that most people
21 have in their mind. I'll find him guilty of capital murder,
22 so he automatically gets the death penalty. It's exactly
23 the opposite. I have found someone guilty of capital murder
24 and now I have -- many additional things have to be proved
25 before a death sentence can be imposed.

1 So the fact that things give you pause,
2 actually makes you fall right in line with the law because
3 you are skeptical to the extent that the rest of it has to
4 be proved to me before I could vote on these issues. Is
5 that a fair statement?

6 A. Yes.

7 Q. Okay. That's what I heard you telling us. In
8 fact, Mr. Shook asked you about Special Issue No. 1. If you
9 were sitting -- and, once again, I'm not asking you about
10 this particular case. I'm just asking you about cases in
11 general.

12 Would you have an open mind at the second
13 part of the trial as to whether or not the State could prove
14 to you the probability that someone would be a future
15 danger? In other words, could you consider that question
16 separately and apart from what you heard in -- I should say,
17 can you consider that question and not automatically have
18 answered that question by your verdict in the first part of
19 the case? In other words, just because someone has been
20 convicted of capital murder, would you have already made up
21 your mind that they would be a danger in the future?

22 A. Yes.

23 Q. And could you tell me how -- why you would
24 feel that way?

25 A. Unfortunately, I guess, in my mind people are

1 sometimes -- maybe a creature of habit or if they have been
2 able to do something once, there's a probability they will
3 do it again.

4 Q. Okay. So you wouldn't require the State to
5 prove that to you beyond a reasonable doubt?

6 A. If -- okay. I may have misunderstood you.
7 Did we already find the person guilty?

8 Q. Yes, sir.

9 A. Then in my mind the probability is there.

10 Q. Okay. So -- okay.

11 THE COURT: Mr. Thompson, we very much
12 appreciate your time and service here to the Court today.
13 Understanding the law, the parties have agreed to excuse you
14 from jury service in this case. We want to thank you.

15 [Prospective juror out]

16 (Recess)

17 THE COURT: Ms. Coleman.

18 [Prospective juror in]

19 THE COURT: Thank you. You may be
20 seated.

21 PROSPECTIVE JUROR: Thank you.

22 THE COURT: Good afternoon. How are you
23 doing?

24 PROSPECTIVE JUROR: Good afternoon. I'm
25 fine. How are you?

1 THE COURT: Doing pretty good. You
2 pronounce your name Antwanette Coleman?

3 PROSPECTIVE JUROR: Antwanette Coleman.

4 THE COURT: Welcome to the 283rd. Have
5 you had enough time to read the guide I provided for you?

6 PROSPECTIVE JUROR: I have.

7 THE COURT: And review your
8 questionnaire? I know you filled that out in May. They
9 will be asking you some followup questions, so I want to
10 give you an opportunity to reflect on what you put down
11 previously. Please don't think you have to understand all
12 the law that I have provided you. That's what this
13 opportunity is for, for the lawyers to visit with you, give
14 you examples, and let you figure out how it all
15 interrelates.

16 Two questions I have at the end of the
17 process are, number one, do you understand the law? And,
18 number two, can you follow the law? That's my role here in
19 this process.

20 Before I let the attorneys begin, the
21 question that I have for you now is will you be able to
22 serve this Court beginning November 10th for two weeks?

23 PROSPECTIVE JUROR: I would -- I teach
24 school, so I would be away from my students for two weeks,
25 but I know that other people have jobs also and they have to

1 do this.

2 THE COURT: It's called substitute
3 teacher.

4 PROSPECTIVE JUROR: Yes.

5 THE COURT: Very good. Mr. Shook?

6 MR. SHOOK: May it please the Court.

7 ANTWANETTE COLEMAN,
8 having been duly sworn, was examined and testified as
9 follows:

10 DIRECT EXAMINATION

11 BY MR. SHOOK:

12 Q. Ms. Coleman, my name is Toby Shook. I'm going
13 to ask you questions on behalf of the State today. If you
14 have any questions of me, just feel free to ask me at any
15 time, all right?

16 A. Yes.

17 Q. We try to keep it informal. Have you been
18 down on jury duty before?

19 A. I've been on jury duty before.

20 Q. Were you selected on a jury?

21 A. No.

22 Q. You know, then, probably, did you get at least
23 called to a courtroom?

24 A. Yes.

25 Q. Okay. Jury selection usually is done in just

1 a big panel, but because it's a death penalty case, we talk
2 to each juror individually. There are not any right or
3 wrong answers. We just want your honest opinions. And you
4 have been very forthcoming on your questionnaire and I want
5 to follow up on some of those answers and talk to you about
6 the death penalty. Okay?

7 A. Sure.

8 Q. One of the things we ask you about in the case
9 is if you had any moral, religious, or personal beliefs that
10 prevent you from assessing this type of verdict, because
11 many people do. People feel very differently about the
12 death penalty. You said at the time that you were -- you
13 said yes, that you were somewhat uncertain about your
14 religious beliefs on it.

15 Have you looked further into this or
16 talked to anyone about it since you filled out this
17 questionnaire?

18 A. I did. I went and talked to a minister at my
19 church and I also did my own research.

20 Q. And what have you found?

21 A. I found that in the Bible in Romans 13 it says
22 that there are laws that are here on the Earth that we must
23 follow. And even though I am a Christian and I do believe
24 in Jesus Christ, I must follow the laws that are set here
25 before me. So if the law is that the death penalty would be

1 the punishment that would be bestowed upon someone, then
2 that is the law that I would have to follow.

3 Q. Now, we talk to everyone and want their honest
4 opinions because we talk about two areas. We will talk
5 about what the law is, but we also want to know what your
6 honest feelings are, because, obviously, people feel very
7 differently on different ends, especially about the death
8 penalty.

9 And sometimes people agree with the law
10 and sometimes they don't. Just because there is a law does
11 not mean you have to follow it, necessarily, especially if
12 you have some kind of objection to it morally or mentally or
13 based on your personal beliefs. The law doesn't force you
14 on juries. It just depends on how strongly you feel about
15 that, obviously.

16 You know, it kind of works both ways. If
17 you were close to someone as a crime victim, let's say
18 someone close to you was hurt severely or killed in a
19 violent crime, then a week later you were called down for
20 jury selection and it's a violent crime. At that point in
21 time you may not be suitable because you, obviously, would
22 be too close to that type of a case, even though the law
23 would ask you to be fair. And you just wouldn't be able to
24 in that type of case. See where that comes from?

25 A. I do.

1 Q. People feel the same way about the death
2 penalty, both ways. And I want to explore with you how you
3 feel, really, about the death penalty. Have you thought
4 about it more since you filled out that questionnaire?

5 A. I have.

6 Q. You seem like a thoughtful person. You did
7 your own research to some extent. How do you feel about the
8 death penalty as a law? Is that something that you agree
9 with personally?

10 A. I think that we need laws like that.

11 Q. Why is that?

12 A. Because I believe that it can act as a
13 deterrent to a person who may decide to commit a crime.
14 They may decide not to do it because they know that that's a
15 punishment that may be bestowed upon them.

16 Q. What types of cases do you think should fall
17 into consideration of the death penalty?

18 A. I think that if you are a child molester, I
19 think that if you are a child rapist, I think that if you
20 commit other crimes in the process of committing other
21 crimes, crime upon crime, that those things should be
22 punishable by death.

23 Q. Okay. So child molesters, child rapists, what
24 about rapists of adults?

25 A. I view that as just as bad, but I view it

1 differently because children don't have -- they have an
2 innocence to me. And children -- as adults, we're here to
3 protect children. That's the way I view that.

4 Q. All right. In Texas the death penalty is
5 reserved just for certain types of murder cases, murders
6 with some aggravating factors. Murders that occur during
7 felonies, such as a robbery. Someone goes in and robs a
8 7-Eleven and shoots the clerk. That can be a death penalty
9 case. Someone who goes in and breaks into a building, a
10 house, and murders the homeowner, that could be a death
11 penalty case.

12 Someone who murders someone during a
13 rape, that could be a death penalty case or kidnapping or
14 arson. Plus murder of a child under the age of six or
15 murder of a police officer or fireman on duty, could be a
16 death penalty case. Or having more -- or several victims
17 like a mass murderer or serial killer. But those are the
18 limited situations in which the death penalty could be
19 applied in those type cases.

20 Do you agree that those types of cases at
21 least should be for consideration of the death penalty?

22 A. I do.

23 Q. Okay. Another concept I want to talk with you
24 about is what we call the law of parties or accomplices.
25 When we think of the death penalty or crime deserving of it,

1 we usually think of the triggerman, the person that goes
2 into, let's say, the 7-Eleven and robs the clerk and shoots
3 them. The law says that capital murder can be -- you can
4 prosecute someone for capital murder if more than one person
5 commits it. Sometimes you have more than one person commit
6 an offense.

7 If me and Mr. Wirskye, let's say, want to
8 rob a bank and we recruit someone to help us. They are
9 going to be our getaway driver. We drive to the bank. They
10 are supposed to keep the car running, yell out if the police
11 are coming.

12 We go inside and I have guns and they
13 know I have guns. I pull them out and hold everyone at bay
14 and Mr. Wirskye gathers the money up and puts it in a bag.
15 At some point in time during that robbery, I get mad at one
16 of the tellers or Mr. Wirskye warns me that someone is
17 hitting an alarm, and I start shooting. I shoot one and
18 kill them.

19 Obviously, I could be prosecuted for
20 capital murder. I could even receive the death penalty
21 because I caused that murder. There are other situations in
22 which the law says that you can also pursue capital murder
23 charges against the accomplices, even though they didn't
24 actually pull the trigger.

25 People feel differently about that from a

1 personal point of view, and that's what I want to ask you.
2 I think you have told us that you are for the death penalty
3 for the triggerman, the people that actually caused these
4 murders, depending on the facts?

5 A. Uh-huh.

6 Q. But how do you feel about these people who
7 assist, the accomplice, that don't actually cause the death?
8 Do you think the death penalty is appropriate for those
9 types of cases or in your mind would that be more
10 appropriate for a prison sentence?

11 A. I really think that a person is really just as
12 culpable if they accompany someone to commit a crime,
13 because at the same time you helped the person commit the
14 crime, you could have maybe talked them out of it and
15 stopped it.

16 Q. So in my situation you think that Mr. Wirsky,
17 gathering up the money, and the getaway driver, since they
18 are in on it and they know what is going on, they are just
19 as guilty of capital murder?

20 A. They are. They planned it with you, they were
21 there with you, they were there the whole time, they could
22 have done something to stop that murder.

23 Q. Okay. And in your opinion are they deserving
24 of the death penalty?

25 A. They would be -- they are just as culpable.

1 Q. And this goes back to your feeling about
2 deterring other criminals and holding them accountable, that
3 sort of thing?

4 A. Exactly.

5 Q. Ms. Coleman, what do you recall about this
6 case? This case got a lot of publicity, if you recall, and
7 we ask each juror what they remember about it.

8 A. During the time that this was going on, I
9 believe I was working on my masters degree, so I did not
10 watch a lot of the news. I do recall seeing there were some
11 escapees in southern Texas, from southern Texas, that had
12 escaped and they were believed to have killed an officer at
13 an Oshman's in Irving. Um, I remember the capture, but the
14 fine details as far as reading the papers and really
15 watching the news about it, I did not do.

16 Q. Do you think what you read or heard would
17 influence you in any way if you were chosen as a juror?

18 A. No, I would have to hear the facts.

19 Q. That's what the law is. I figured that's what
20 you would tell us. I just wanted to make sure. The law is
21 that you have to decide on what you hear in the courtroom.
22 Look a minute on Special Issue No. 1. If you would, read
23 that to yourself. I want to ask you some questions about
24 Special Issue No. 1 and you can find that in the packet or
25 we have a board over here to the right.

1 MR. SHOOK: May we have a moment, Judge?

2 (Bench conference)

3 MR. SHOOK: I believe that's all the
4 questions that I have, then, Judge.

5 MS. BUSBEE: I don't have any questions.
6 I believe we have reached an agreement.

7 THE COURT: Ms. Coleman, the parties have
8 agreed to excuse you from jury service. It's probably not
9 the best case for you and we appreciate your time and
10 service here today and you coming down. And you can go back
11 and tell your students all about this process.

12 PROSPECTIVE JUROR: I will.

13 [Prospective juror out]

14 THE COURT: Wayland Taylor.

15 [Prospective juror in]

16 THE COURT: Good afternoon, sir, how are
17 you?

18 PROSPECTIVE JUROR: Good. And you?

19 THE COURT: I've had a good day so far.
20 Mr. Wayland Taylor?

21 PROSPECTIVE JUROR: Yes.

22 THE COURT: You go by Wayland or Terill?

23 PROSPECTIVE JUROR: I actually go by
24 Terill.

25 THE COURT: Have you had an opportunity

1 to review the guide that I gave you this afternoon?

2 PROSPECTIVE JUROR: Yes.

3 THE COURT: It's a lot of law to give you
4 all at once. And you've had an opportunity to review your
5 questionnaire that you filled out for us?

6 PROSPECTIVE JUROR: Yes.

7 THE COURT: Trust me, you don't have to
8 understand it all right now. The whole process, sir, is for
9 the attorneys to visit with you and explain the law to you,
10 so you have a better understanding of how it all
11 interrelates.

12 Two questions that I will have at the end
13 of the process are, first, is do you understand the law?
14 The second question is, if you understand the law, can you
15 follow the law? That's my job here.

16 The only question that I have for you
17 before we begin is, this trial shall be beginning on the
18 10th day of November for a period of two weeks. Is there
19 any major reason why you could not serve this Court during
20 that period of time?

21 PROSPECTIVE JUROR: There is a reason I
22 was going to bring up to you. I just started a new job and
23 it's selling cough and cold medicine, pharmaceutical sales.
24 My base salary right now is \$20,000 or a little bit less and
25 I'm kind of getting my feet planted in. And our peak time

1 is going to be November and I have to be in the field to
2 make a living. And through the summer we pretty much
3 starve. And paying off student loans and paying off
4 hospital bills from an accident that I had is going to be --
5 it's going to hurt me pretty good.

6 THE COURT: Mr. Taylor, I understand
7 that. And I'm sympathetic with anyone who comes in the
8 door, but I cannot excuse anyone for business reasons. I'm
9 putting this far enough out, if you are selected for this
10 trial, you would have to rearrange your schedule around
11 that.

12 PROSPECTIVE JUROR: Right.

13 THE COURT: You won't be sequestered.
14 You would be able to use the phone during the breaks, over
15 the lunch hour, afternoon breaks. We work very normal
16 hours, as I gave you in my guide. I won't shut you
17 completely down. We don't think it would take the full two
18 weeks, but I'm being cautious for you to plan the two weeks,
19 that you have to block out.

20 The reality is it's like paying taxes,
21 nobody wants to do it.

22 PROSPECTIVE JUROR: I understand.

23 THE COURT: With that understanding, I
24 ask people, you know, you will just have to do the best you
25 can. So can you serve?

1 PROSPECTIVE JUROR: I can do my best.

2 THE COURT: Thank you, sir. Mr. Wirskye?

3 MR. WIRSKYE: May it please the Court.

4 WAYLAND TERILL TAYLOR,

5 having been duly sworn, was examined and testified as
6 follows:

7 DIRECT EXAMINATION

8 BY MR. WIRSKYE:

9 Q. Mr. Taylor, how are you?

10 A. Good. And you, sir?

11 Q. Thanks for coming down. My name is Bill
12 Wirskye and I'm an assistant DA and I'll be visiting with
13 you the next few minutes, talk a little bit about some of
14 the information on your questionnaire, talk kind of in
15 general how you feel about the death penalty. And I know
16 you have given us some answers already in your
17 questionnaire.

18 Just following up from what the Judge
19 said, the work situation, you know, everybody has problems
20 and we can't let everybody off that it would be an economic
21 hardship to, necessarily.

22 A. I understand.

23 Q. But I want to ask you this. It sounds like
24 you have student loans and I just finished off ten years of
25 them, so -- there is a lot of hope at the end of the

1 process. But is it something you think if you were selected
2 to be a juror in this case, that it would be in your mind
3 what's going on at work or financial considerations or
4 something like that?

5 A. It would in a sense, because I'm coming off
6 summer, which we make pretty much no money right now and
7 maybe \$200 in commission. And, like I said, that's just our
8 peak. That's my make-up period for the next summer. So I
9 would be hurting for a while if it's more than a week or so.

10 Q. Sounds like you have some pretty substantial
11 concerns and that type of thing?

12 A. Yes.

13 Q. Do you think if you were here serving for a
14 two-week period in November, it is something that would
15 maybe substantially impair or affect your ability to
16 concentrate on what is going on in the courtroom?

17 A. It might, it might just -- yeah, probably so,
18 yes.

19 Q. Bills to pay, that type of thing?

20 A. Yes.

21 Q. Okay. So it will be difficult for you to pay
22 full attention to the evidence and the witnesses and things
23 like that because you have over things going on in your head
24 with your own personal life; is that right?

25 A. Yes.

1 Q. Okay. Let me also ask you this, you know,
2 now, obviously, this is a case where the State is seeking
3 the death penalty?

4 A. Yes.

5 Q. We talked to a lot of people. You remember
6 that big group you were down with in the morning when you
7 came down and we had another big group in the afternoon. So
8 we call down quite a few people. We know this is not
9 everybody's cup of tea.

10 People -- you know, we have people that
11 don't believe in the death penalty. Obviously, they are not
12 necessarily qualified. We have people that believe, I
13 guess, too strongly in the death penalty and they are not
14 qualified to serve as a particular -- in this particular
15 type case.

16 And we know this is -- there's a lot at
17 stake for both sides. It's an important case and we don't
18 want to force anybody into the jury box that may be
19 uncomfortable sitting in a death penalty case. You have
20 told us that you are against the death penalty; is that
21 right?

22 A. On most cases, most but the extreme cases.

23 Q. And why do you feel that way?

24 A. I generally don't believe that it's -- that
25 it's right to take human life in any situation, but I

1 believe there are certain instances where, where it's just
2 unavoidable, especially for some that's committed a pretty
3 heinous crime.

4 Q. And you think in your own mind the heinous
5 crime that may be deserving of the death penalty, what type
6 of case are you thinking about?

7 A. It's tough to put a label on it, but it would
8 have to be something that I would make the call personally
9 at the moment. Of course, just, you know, generally the
10 more extreme ones would be, but --

11 Q. Like mass murderers, serial murder type thing,
12 terrorism?

13 A. All of those or of children or it's -- it
14 would be a tough decision. I would have to -- but I would
15 have to make it, if need be.

16 Q. You have told us in your questionnaire that
17 you think the death penalty is used too often in our state;
18 is that right?

19 A. I believe it's used a lot in our state. Maybe
20 too often in some instances, but, then again, I wasn't in
21 the courtroom.

22 Q. And you have had a chance to look at the law
23 the Judge gave you in that little packet?

24 A. Yes.

25 Q. And you know now that the death penalty in

1 Texas is only available for a certain type of murder case.
2 And I was just wondering, and most people, when they come
3 in, have no idea what the scheme is or when and how it's
4 available.

5 But now that you have looked at some of
6 the crimes, the murder of a policeman or murder during the
7 course of a robbery, that type of thing, how does that kind
8 of square, you know, the law we have in Texas, square with
9 your beliefs as to what an appropriate death penalty case
10 should be?

11 A. Personally, I'm not sure about the death
12 penalty for the robbery. But murder of a policeman,
13 definitely I would be in favor of the death penalty for.

14 Q. Okay. Would it be a situation where you would
15 be comfortable serving as a juror in a death penalty case?
16 Like I said, we realize not everybody is cut out for this
17 and some people just don't want to be put in that position,
18 and we realize that.

19 A. Right.

20 Q. What are you thinking?

21 A. I would be as comfortable as expected,
22 probably.

23 Q. What?

24 A. As comfortable as expected.

25 Q. Let me take you to another issue. Usually --

1 I'll give you an example. Capital murder in Texas, you
2 know, intentional murder during the course of a robbery, can
3 potentially be a death penalty case. And I think when most
4 people think of that off the top of their head, they are
5 kind of thinking of the lone gunman, the one guy that goes
6 into the 7-Eleven, holds up the clerk, and shoots and kills
7 them and makes off with the money.

8 Oftentimes, crimes are committed by more
9 than one person, groups or gangs of people can commit a
10 crime. The law in Texas allows, you know, depending on the
11 facts and circumstances, allows us to prosecute both, for
12 lack of a better word, the triggerman, the person that
13 actually caused the death, as well as the accomplices, the
14 people that didn't actually cause the death. We can
15 prosecute them all for capital murder and, depending on the
16 facts and circumstances, they could all receive the death
17 penalty.

18 And we talked to a lot of people who
19 believe very strongly in the death penalty and they believe
20 in it just for the person that actually took the life, the
21 person that actually pulled the trigger. And they draw a
22 line and say, under no circumstances would I ever even
23 consider giving the death penalty to an accomplice, someone
24 that didn't actually cause the death, who was there just
25 participating in the robbery, that type of thing. What do

1 you think about that?

2 A. Again, it would be tough to make a blanket
3 statement without knowing all the facts. I generally would
4 kind of go the same way. It would be tougher. It would be
5 tougher to impose the death penalty on an accomplice. But
6 then, again, if the facts of the case could vary so widely,
7 it depends on how much involvement that person had or, you
8 know, what was actually going on in the crime situation.

9 Q. Okay. And I know, you know, we bring you down
10 here and hit you with a lot of things and we always keep
11 giving you examples and examples. But let me give you this
12 one and get your thoughts on it.

13 Say Mr. Shook and I decide we're going to
14 rob a bank. That's what we agree to do and we recruit a
15 third friend who has a car to drive us up to the bank. He's
16 going to wait outside and look for the police. And if the
17 police come, he's going to tap on the horn, that type of
18 thing. We have only got one gun and the plan is for
19 Mr. Shook to take it in, hold up the bank teller, and I'm
20 going to go in just with a bag and collect the money. And
21 that's what we've agreed to do is to commit this bank
22 robbery.

23 During the course of the robbery, for
24 whatever reason, maybe the teller looked at Mr. Shook wrong
25 or he thought maybe she was going for a silent alarm or

1 something, he shoots and kills that teller, that clerk.
2 Obviously, he's committed -- he's the triggerman. He's
3 committed capital murder and could be convicted of capital
4 murder and potentially receive the death sentence.

5 What do you think about somebody in my
6 spot in that example?

7 A. I would have trouble giving the death penalty
8 to maybe the driver, but it would be tough. Like I said --

9 Q. You know, let me see if this clears it up.
10 You know, we agree just for the bank robbery. I never had
11 any intent that anyone would get hurt or killed. That was
12 never in my mind. That's not what I signed on for. I just
13 signed on for the bank robbery.

14 Sounds like from what you are telling me
15 is the death penalty would be off the table for the guy out
16 in the car, the lookout?

17 A. I think so.

18 Q. What about me? What do you think?

19 A. More than often I would probably say, no, it
20 wouldn't. It just depends, you know, on the situation
21 happening at the time. It's a tough call to make.

22 Q. It is, you know, unfortunately, we kind of ask
23 these tough questions.

24 A. Right.

25 Q. I'll be frank with you. We're prosecuting

1 this case under that accomplice theory. That's the theory
2 we're prosecuting Mr. Murphy under, that he is not the
3 triggerman. He's an accomplice. That's why we kind of
4 start off with this and spend a lot of time talking to
5 people. Like I said, even people who feel very strongly
6 about the death penalty, a lot of those folks would just
7 take it off the table for an accomplice or even the guy out
8 driving.

9 Do you think you would be comfortable --
10 well, do you think that you would be comfortable sitting in
11 that type of case with an accomplice being prosecuted?

12 A. I mean, it would be a tough case. I think
13 that -- I think that it could go -- it really could go
14 either way with the accomplice involved in that situation,
15 how much planning was involved in it. That's a tough --
16 it's just a tough question to answer, I'm sorry.

17 Q. That's okay. The law allows us to prosecute
18 people under that theory and that's why it's important, you
19 know, whether you agree or disagree with the law. The
20 important thing is whether you can follow it. And, you
21 know, if you do disagree with it and you are on the jury and
22 you are asked to follow it, we don't want to put anyone in
23 that type of spot, a crisis of conscience, or jam somebody
24 up. And that's why we spend so much time talking about it.

25 And just to be frank with you, I told you

1 we are prosecuting him as an accomplice. We feel we have
2 the nature and type of evidence that's going to cause a jury
3 to convict him of capital murder and answer those three
4 questions in such a way that he would ultimately receive the
5 death penalty.

6 A lot of people we talk to, again, are in
7 favor of the death penalty in kind of an abstract or
8 philosophical way. But when we get down to this point and
9 we're actually sitting in the courtroom and looking at
10 somebody that's alive and breathing right now, knowing they
11 may potentially participate in a process that takes that
12 person's life, that's kind of another thing.

13 The analogy I like to use sometimes is
14 I'm definitely scared of heights. I see those guys downtown
15 that wash windows up on the skyscrapers. I could never do
16 it. I'm glad somebody can, but I just could never do it
17 because I'm scared of heights.

18 That's what a lot of people tell us about
19 participating in this process. Do you think that you are
20 the type person that could participate in this process?

21 A. I wouldn't enjoy it one bit.

22 Q. And obviously no one would.

23 A. I wouldn't -- excuse me, I didn't mean to
24 interrupt you.

25 Q. No, go ahead.

1 A. Yeah. It wouldn't be something that I would
2 feel very comfortable doing at all.

3 Q. Uh-huh. I don't think anybody would. I think
4 one of the reasons, you know, we talk to a lot of people
5 that say, you know, I don't want to live with this for the
6 next few years, the consequence of my decisions, because, as
7 you know, Texas is the most active state with the death
8 penalty. A death penalty is a reality here. Juries assess
9 it and it's actually carried out.

10 You know, oftentimes the press reports
11 kind of the grizzly details of each execution. People tell
12 us, you know, I don't want that weighing on my mind. I
13 don't want it weighing on my conscience.

14 But do you think that you are the type
15 person that could take pen in hand and answer those three
16 questions such that it might one day result in the execution
17 of Patrick Murphy?

18 A. If I had to in a certain situation, I would.

19 Q. But if you had your druthers, you would rather
20 not?

21 A. Exactly.

22 Q. Let me ask you to take just a few more minutes
23 and look at those questions. We may talk about them here in
24 just a second. Just take a few minutes and read them to
25 yourself.

1 A. [Prospective juror complies.]

2 MR. WIRSKYE: May we approach, Your
3 Honor?

4 THE COURT: You may.

5 (Bench conference)

6 THE COURT: Any further questions?

7 MR. WIRSKYE: Nothing from the State.
8 Thank you, sir.

9 MS. BUSBEE: No, sir. We have reached an
10 agreement.

11 THE COURT: Mr. Taylor, we appreciate you
12 coming down and serving today and the attorneys have agreed
13 they are not going to seat you on this jury. So you are
14 free to go.

15 PROSPECTIVE JUROR: Thanks a lot.

16 [Prospective juror out]

17 THE COURT: Mr. Nelson.

18 [Prospective juror in]

19 THE COURT: Good afternoon, Mr. Nelson,
20 how are you?

21 PROSPECTIVE JUROR: Fine. How are you?

22 THE COURT: Welcome to the 283rd. Have
23 you had an opportunity to read the guide I provided for you
24 a couple of times?

25 PROSPECTIVE JUROR: Yes.

1 THE COURT: And looked over your
2 questionnaire?

3 PROSPECTIVE JUROR: Yes.

4 THE COURT: You come in and expect you to
5 remember everything that you told us back in May. Then we
6 hand you a bunch of law. Please, sir, you don't have to
7 understand everything about it at this point. The lawyers
8 are going to visit with you for a period of time.

9 The whole idea is at the end of the
10 process I have two questions to ask. First is, do you
11 understand the law and how it all interrelates? And the
12 second is, if you understand the law, can you follow the
13 law? And that's my job here. All they're looking for is
14 honest, truthful answers and your opinions. They will ask
15 you questions about the answers you have already provided
16 and expand on an answer. Tell me where you got it, that
17 type of thing.

18 The only question that I have for you at
19 this time, sir, is will you have any trouble serving this
20 Court for two weeks beginning on November 10th?

21 PROSPECTIVE JUROR: I'm self-employed and
22 I'm the only person in my business. So as long as I wasn't
23 here eight hours a day and had some opportunity to carry on
24 a little bit of business, it wouldn't be difficult.

25 THE COURT: Yes, sir, I certainly

1 appreciate self-employed people. It's like paying taxes,
2 nobody wants to do it. You will be able to use the phone
3 during the day. When we have a long lunch break, you would
4 be able to use a phone to stay connected with your office
5 and manage business as best you can. If you read the first
6 page there, I do keep real regular hours. So you can
7 predict when you can be out and be back at the office and
8 you will be able to have at least some time in the afternoon
9 to conduct some business. I understand that and will make
10 the best accommodations as we can.

11 Obviously, you can't have any
12 interruptions during the trial, but you would be able to use
13 your phone during the break. Fair enough?

14 PROSPECTIVE JUROR: Yes.

15 THE COURT: Mr. Shook, would you like to
16 inquire?

17 MR. SHOOK: May it please the Court.

18 JAMES NELSON,
19 having been duly sworn, was examined and testified as
20 follows:

21 DIRECT EXAMINATION

22 BY MR. SHOOK:

23 Q. Mr. Nelson, my name is Toby Shook. I'll be
24 asking you questions on behalf of the State this afternoon.
25 You have been down on jury service before; is that right?

1 A. I was called. I wasn't selected, but, yes, I
2 have been.

3 Q. Okay. We do it a little differently because
4 it's a capital murder case in which the State is seeking the
5 death penalty. The procedure is after filling out this
6 questionnaire, we talk to each juror individually and, as
7 the Judge said, we're just really interested in your honest
8 opinions.

9 You have been very forthright on your
10 questionnaire. I want to follow up on a few things on that,
11 talk about the death penalty, capital murder, and some of
12 the laws that apply.

13 I see by your questionnaire you said that
14 you were self-employed. You work in marble and granite
15 fabrication?

16 A Yes.

17 Q. Tell us a little more what you do with that.

18 A. I take large pieces of stone and cut them and
19 grind them and polish them and make countertops and fire
20 places and furniture and those kinds of things and install
21 them in residential.

22 Q. How do you get your business? Is it word of
23 mouth? Do you advertise?

24 A. It's referrals.

25 Q. Referrals usually?

1 A. Exclusively.

2 Q. The Judge told you and I know these cases in
3 California seem like they go on for whatever reason for four
4 or five months. But this case won't go any longer than two
5 weeks, perhaps a little shorter. We don't know. But we can
6 tell you the most will be two weeks.

7 And as the Judge said, he keeps regular
8 business hours, pretty much on schedule. We ask every juror
9 -- you know, everyone's situation is a little different.
10 But if you were selected as a juror for those two weeks in
11 November, would you be able to give the case your full
12 attention, even though you are self-employed?

13 A. Like I said before, as long as I had some time
14 to do some things. But if I'm completely shut down for two
15 weeks, it would be an extreme hardship for me. But I work a
16 lot of hours. So I could work a lighter load. And as long
17 as I still have a few hours in the evening or early morning.

18 Q. All right. It's just -- it comes down to
19 this, is if you can tell the Court, when I'm here listening
20 to the evidence and deliberating, I will give the case my
21 full attention.

22 A. Oh, yes, sir.

23 Q. Some people have told us just because of my
24 particular situation at this time, no, I wouldn't be able
25 to. Other people tell us it would be a hardship, but I

1 could. And we just rely on your honesty and your particular
2 situation. I take it from your answers you would be able to
3 do that?

4 A. Yes, I believe so.

5 Q. Thank you. Now, you say you were raised in
6 Illinois and you spent some time in Iowa and then you came
7 down to Texas about 20 years ago?

8 A. Yes.

9 Q. What brought you down to Texas?

10 A. A job.

11 Q. And then raised your teens and raised your
12 family here?

13 A. Yes, sir.

14 Q. Your wife is a teacher in Garland?

15 A. Yes.

16 Q. What does she teach?

17 A. She teaches sixth grade English at the Austin
18 Arts Academy in Garland.

19 Q. Your children, I saw one is actually employed
20 with the Dallas Symphony; is that right?

21 A. Yes, sir.

22 Q. I saw an article this weekend that had a bunch
23 of profiles. Was she in that by any chance?

24 A. I don't know if she was.

25 Q. It showed --

1 A. It was their gala.

2 Q. Yeah. And the other is also a teacher at
3 Garland?

4 A. Yes. She teaches in Coyle Middle School in
5 Rowlett.

6 Q. One of the interesting things, you know, we
7 see a little bit of everything in these questionnaires and
8 they are quite lengthy and, believe it or not, they are
9 quite helpful to us. I know it takes a long time, but we
10 ask if you have ever been dealt within the system and you
11 had in 1966 an unlawful assembly case and I have never seen
12 that before. Tell us a little bit about that.

13 A. Well, there were about 12 or 14 of us that
14 went to a party and in that day it was called an open house
15 and we were walking up the driveway and a police officer
16 pulled up. And we explained to him that it was an open
17 house and he said, were you invited? And we explained, no,
18 you don't get invited. You heard about it and you went.
19 And he couldn't understand that.

20 And we were on our way back to our cars
21 and one young man decided to smart off to the officer and he
22 said, follow me.

23 Q. Okay.

24 A. Fourteen of us went to jail and only twelve of
25 us went to trial. And one, I received probation and one guy

1 actually went to jail.

2 Q. Would you --

3 A. But there were a lot of different people who
4 kind of joined with us.

5 Q. Okay. Anything about that experience which
6 would cause you any problems sitting as a juror in this type
7 of case?

8 A. I don't believe so.

9 Q. All right. Now, let me talk to you about
10 specifically capital murder and the death penalty. You know
11 from the Judge's introduction back when you first came down,
12 and the questionnaire, that this is a case in which the
13 State is seeking the death penalty. So we want to talk to
14 each juror individually how they feel about it. You put on
15 the questionnaire that you are in favor of the death
16 penalty. I would like you to kind of follow up and tell us
17 why you favor the death penalty, maybe the purpose you feel
18 it serves society.

19 A. Well, I believe that there's one thing that
20 the death penalty does and that's that it never gives anyone
21 an opportunity to commit the crime again. And I think that
22 in itself is a fairly good justification for it because, I
23 mean, we have a lot of repeat offenders.

24 Q. Okay. Has the death penalty been a law that
25 you have always agreed with?

1 A. Um, I think probably. I mean, it's only as I
2 get older that I think about it, you know. When I was
3 younger, I didn't spend a whole lot of time thinking about
4 it. It just seemed like a good idea and, you know, given it
5 more thought.

6 Q. Okay. Have you ever followed any cases in the
7 media locally or nationally, any criminal cases, murder
8 cases, that you thought were appropriate for the death
9 penalty or involved the death penalty, anything like that?

10 A. I don't think anything that really made an
11 impression on me. I mean, I read a little bit of the
12 newspaper, I listen to a lot of radio, and so, yes, I follow
13 them, but with some interest. But I don't think that I have
14 ever had one that I remember that just really made a giant
15 impression on me.

16 Q. Okay. When you think of a case where they
17 have the death penalty or consideration of the death
18 penalty, what types of cases come to mind that you think
19 would be appropriate?

20 A. Um, that's a tough question. I think things
21 that, you know, where people just show total wanton
22 disregard for life.

23 Q. If it were up to you, would you reserve the
24 death penalty for just certain types of murder cases or
25 would there be other crimes that might come into

1 consideration?

2 A. There might be some other crimes.

3 Q. What would those be?

4 A. Things like rape, involving kidnapping or
5 torture, things like that, particularly heinous people.

6 Q. All right. In Texas the death penalty in the
7 current state is just reserved for murder cases and then
8 only a specific type. It has to be an intentional killing
9 without legal justification. That is, it's not in
10 self-defense. It's not an accident. And then not every
11 murder case is a death penalty case. We have some brutal
12 murders that can get life in prison or 99 years, but not the
13 death penalty.

14 I can take a gun out now and get mad at
15 Mr. Wirskye because I didn't like his tie or something he
16 said and really, for no good reason, shoot him, execute him,
17 and laugh about it in front of everyone and I couldn't get
18 the death penalty for that. I could get punished severely
19 with life in prison, but I couldn't get the death penalty.

20 In Texas the death penalty is reserved
21 for a murder that occurs with some other aggravating facts,
22 such as a murder that occurs during a felony, robbery. If I
23 walk into a 7-Eleven and rob the clerk and kill him, that
24 could be a death penalty case in Texas.

25 Burglary, someone breaks in a home,

1 murders someone in the home, or during a rape, arson, or
2 kidnapping. Also specific types of individuals, children
3 under the age of six, if they are murdered, that can be a
4 death penalty case. Murder of a police officer on duty,
5 fireman on duty, prison guard on duty. Murder for hire,
6 someone does it for money, that could be a death penalty
7 situation. Or a mass murderer or serial killer situation.
8 Those are the specific types of cases that have been
9 reserved for the death penalty.

10 Do you agree with those types of cases in
11 general, that they should come into consideration for the
12 death penalty?

13 A. I believe so, yes.

14 Q. Okay. Also in Texas the law recognizes that
15 more than one person can carry out a crime. When we think
16 of the capital murder or the case worthy of consideration,
17 we think of an example. We automatically think of the
18 actual triggerman or the killer. But like any other crime,
19 several people may commit a capital murder.

20 The law says that if you are actively
21 participating in a crime or capital murder, you can be held
22 responsible, even though others may have a greater role.
23 You may have just one triggerman, but you can have several
24 people that carry it out.

25 An example we use is if Mr. Wirsky and I

1 agree that we want to rob a bank and we recruit someone else
2 to help us in that, to be our getaway driver. Let's say he
3 drives us there, pulls up in front, keeps the car running.
4 He's going to warn us if any authorities come. The plan is
5 for me to go in with the loaded gun. Mr. Wirskye will go in
6 with a big bag.

7 I draw down on everyone. I threaten
8 everybody and he starts gathering the money. Now, for some
9 reason, I don't like the teller or maybe he warns me that
10 someone is going to hit an alarm and I murder someone in
11 there. We run out and get caught.

12 Obviously, I could be prosecuted for
13 capital murder and I could receive the death penalty. I'm
14 the triggerman. The law says that Mr. Wirskye and the
15 getaway driver could also be prosecuted, depending on the
16 particular facts, because they were assisting and they were
17 a party. We call it the law of parties. Or they were an
18 accomplice to the offense.

19 People feel differently about this as far
20 as the concept of the law and the death penalty goes. You
21 have folks that agree with the death penalty, but they would
22 only apply it in cases of the actual triggerman. They don't
23 think it's just or fair or they don't think the death
24 penalty is appropriate for an accomplice that didn't
25 actually cause the death.

1 Other jurors tell us they do feel that it
2 applies and they would assess the death penalty, depending
3 on the facts, to the accomplice. They think that it's an
4 appropriate sentence.

5 We like to talk to each juror. I want to
6 kind of get your gut reaction on how you feel about the
7 prosecution of capital murder and the death penalty case on
8 an accomplice, a nontriggerman.

9 A. I think perfectly acceptable. I think if you
10 go into something like that, you probably go in with your
11 eyes wide open and that's one of the things that you ought
12 to be looking at.

13 Q. So if these people have knowledge of the
14 weapons or involved actively in the crime, you feel it's
15 appropriate that the State can pursue those types of
16 charges?

17 A. Yes.

18 Q. And ultimately give an assessment of the death
19 penalty, depending on the particular facts?

20 A. Yes.

21 Q. What's important to you when an accomplice or
22 nontriggerman is prosecuted in that type of situation?

23 A. I suppose -- I'm sorry. Degree of involvement
24 and reaction, maybe.

25 Q. Okay. What do you mean by reaction?

1 A. What they do afterwards.

2 Q. Okay. Kind of what their reaction to the
3 crime was, what their actions were after the crime?

4 A. Yes.

5 Q. Whether they stayed with these people or
6 continued to commit crimes --

7 A. Yes.

8 Q. -- or things of that nature? All right. I
9 want to be up front with you. I put my cards on the table.
10 I can't get into the facts of the case, the specific facts.
11 Obviously, this case got a lot of publicity, but I can tell
12 you that we are prosecuting this case under that law of
13 parties, the defendant as an accomplice. And that's why I
14 asked that question.

15 And I'm going to follow up and make sure
16 every juror is on board with that. And I take it from your
17 answers that if you were chosen to sit on the jury and the
18 evidence did show an appropriate death penalty case in an
19 accomplice situation, that you could assess that, if that's
20 what the facts showed?

21 A. I believe so, yes, sir.

22 Q. Okay. Now, the next question I want to ask
23 you, obviously people don't choose what type of case they
24 come down on. It's kind of pot luck. It might be a civil
25 case, might be a criminal case involving a DWI, burglary, or

1 a capital murder case. Most jurors are a little nervous,
2 you might say, or they are kind of a little apprehensive
3 when they first learn the State is seeking the death
4 penalty.

5 And we ask how you feel at the end of
6 your questionnaire and you put what several people put. You
7 have mixed feelings. And then you put very mixed. Tell us
8 a little bit what was going through your mind at that time.

9 A. Um, I would think a lot of things go through
10 your mind. One is, you know, what am I going to do with my
11 business? But after you get by that one, I think you have
12 to look at it as what an awesome responsibility it is to
13 have to participate or have to participate, however you look
14 at it. And, you know, what your responsibilities are and,
15 you know, it just triggers a lot of thinking.

16 Q. Have you thought about that more since you
17 filled out the questionnaire?

18 A. Yeah.

19 Q. Okay. In addition, when you found out you
20 were coming down --

21 A. Yes.

22 Q. -- on a followup interview? What thoughts
23 have gone through your mind or come to any decisions on any
24 thoughts or mixed feelings?

25 A. I really, you know, I just kind of think the

1 same things over again that it is -- it's quite a
2 responsibility to, you know, to be asked to listen to what's
3 going on and make, you know, an intelligent, informed, and,
4 hopefully, correct decision.

5 Q. Okay. The trial in a capital case is divided
6 into two parts. There's the guilt/innocence stage in which
7 we have to prove the indictment. If you have a reasonable
8 doubt about that, you would find the defendant not guilty.
9 If we prove that, that doesn't end the trial. We go into
10 the punishment phase where you can get additional evidence.

11 At the close of that, you get these
12 Special Issues. And we'll go over these in a little more
13 detail in a minute. But basically what the State has to
14 prove in the punishment phase is that the defendant would be
15 a continuing danger to society, that if he did not actually
16 cause the death, that he anticipated that a death would
17 occur, and, finally, that there's not sufficient mitigating
18 evidence that would cause the jury to assess a life
19 sentence.

20 A yes and a yes and a no answer, that is,
21 he is a continuing danger, he did anticipate a life, and
22 there's not sufficient mitigating evidence, would equal a
23 death sentence. The jury doesn't write death or life in,
24 but that's how the Judge would sentence the defendant, if
25 it's a yes, yes, and no. Any other answers would equal a

1 life sentence. The Judge would sentence the defendant to
2 life.

3 But those are the only two possible
4 outcomes, once we reach that punishment stage, and it all
5 depends on how the jury answers those questions.

6 Are you aware of the method of execution
7 in Texas?

8 A. Yes.

9 Q. By lethal injection?

10 A. Yes.

11 Q. It's in the news quite a bit. You probably
12 know from living here the last 20 years that Texas leads the
13 nation in executions. It's not unusual that we will lead
14 the states in executions every year. Once in a while
15 Florida has, I believe, or Oklahoma. But usually Texas
16 does. And this creates controversy at times depending on if
17 it's a political year or who is getting executed. But it is
18 a state in which this is actually carried out, as opposed to
19 some states that carry it, have it on the books, and nothing
20 ever happens. So jurors should fully expect -- I think you
21 realize this, that the person on trial, if convicted and
22 sentenced this way, will ultimately be executed.

23 The details of executions are often given
24 out. The procedures are the same in each case. They will
25 be the same in this case. On the date of execution he would

1 be given time with family, a last meal. All these things
2 are reported in great detail. There's people that come to
3 watch the execution from both sides, friends or family of
4 the victims, friends or family of the defendant.

5 He's always given an opportunity to give
6 a last statement where he could do anything from beg for
7 forgiveness, to be defiant, plead his innocence. There is
8 always quotes from the victim's family or, again, from the
9 defendant's family.

10 But ultimately what happens at 6 p.m. by
11 law after that last statement, the warden signals the
12 executioner and poisons are injected and he dies a very
13 quick death.

14 And to be as frank as possible with you,
15 that's our goal in this case. We believe we have the type
16 and quality of evidence to convince a jury of the
17 defendant's guilt and that these questions should be
18 answered yes, yes, and no, so that someday Mr. Murphy will
19 lie dead on a gurney in Huntsville, Texas.

20 We can't go into the facts, obviously,
21 and ask you for your verdict. We can't preview the case.
22 But we can ask you this. As best you know yourself, and you
23 have thought about it, I think, if you were selected to sit
24 on this jury and the State did prove these things to you, do
25 you feel that you could take pen in hand and answer those

1 questions in a way knowing that a human life would be taken
2 at some point down the line as I described?

3 A. I believe I could.

4 Q. Okay. And I think you have given careful
5 consideration to that.

6 A. I believe so.

7 Q. All right. Let's talk about these questions,
8 then, for a minute. You don't get to them unless you have
9 found the defendant guilty. Then you can hear additional
10 evidence.

11 This first question asks whether there's
12 a probability that the defendant would commit criminal acts
13 of violence that would constitute a continuing threat to
14 society. It's asking the jurors to make a prediction about
15 the defendant's future behavior.

16 Do you feel you could make that
17 prediction or answer that question, if you are given
18 sufficient evidence?

19 A. I believe so.

20 Q. What things would be important to you in a
21 question like that about future danger?

22 A. Um, I don't know if I exactly understand the
23 question.

24 Q. Well, when you look at that question, you are
25 sitting there as a juror. What kinds of things do you think

1 would be important to you or would you want to know about a
2 person that would help you answer that question?

3 A. Well, like -- I think, obviously, you would
4 want to know what kind of acts have been committed in the
5 past.

6 Q. Okay.

7 A. And where he was going and what his ability
8 might be to commit them in the future.

9 Q. Okay. What he's done in the past is
10 admissible. You can even hear from those witnesses, if
11 they're available, what type of punishment he received, and
12 hear good things, too, kind of a --

13 A. I believe so.

14 Q. -- "This Is Your Life" type of thing.

15 A. Yeah. I think it would be hard to answer the
16 question without all of that.

17 Q. Okay. You also get, obviously, the facts of
18 the case itself, the person's role in that, and the killing
19 that also you could use to look at that evidence. We have
20 to prove to you beyond a reasonable doubt that there's a
21 probability that the defendant would commit criminal acts of
22 violence.

23 When you see the word "probability"
24 there, what does that mean to you?

25 A. Greater than 50 percent.

1 Q. Okay. That's kind of what the law says. When
2 you see "criminal acts of violence", what is that? What do
3 those mean to you?

4 A. Injuring other people.

5 Q. Any type of violence to another human being?
6 That sort of thing?

7 A. I would say that would be criminal acts of
8 violence, yes.

9 Q. And, finally, that would constitute a
10 continuing threat to society. What does "society" mean to
11 you in connection with that sentence?

12 A. I think society is just all those of us who
13 are just trying to live a good life.

14 Q. Could it mean anyone and everyone the
15 defendant may come into contact with, either in the free
16 world or in prison?

17 A. Yeah, I believe so.

18 Q. Okay. When you said part of your -- you said
19 would be important in getting a person's background is what
20 they have done or been capable of doing in the past and also
21 what they may be capable of doing in the future, where they
22 may be. What did you mean by that exactly?

23 A. Well, I meant what kind of acts of violence
24 they have been involved in, in their life before and, you
25 know, what the ability might be to have the opportunity to

1 do it again.

2 Q. Okay. That's the part I want to follow up.
3 When you say the "ability", do you mean what's in their mind
4 or where they will be?

5 A. Both of those.

6 Q. Okay.

7 A. Where they will be and how they are going to
8 feel about being there and what their mind leads them to.

9 Q. Okay. I meant to ask you this a while ago.
10 This case did get a lot of publicity, so every juror has
11 read or seen something about it. What do you recall reading
12 about this case when it occurred or since then?

13 A. I don't remember reading a lot of details,
14 just about the breakout and the death of the officer and
15 fleeing and finding them in Colorado. And I really remember
16 a lot of general things about the case.

17 Q. Did you follow any of the court proceedings
18 since the arrests?

19 A. No, I haven't.

20 Q. The bottom line of that is, you would have to
21 just make your decision on what you hear in the courtroom
22 and not anything that you have read or seen on TV.

23 A. Yes.

24 Q. You can do that? All right. Special Issue
25 No. 2, both of these Special Issues start out with a no

1 answer and the State has to prove to you that they should be
2 answered yes. The fact that you found him guilty doesn't
3 mean you answer those yes. You have to go back, weigh the
4 evidence, and then make your decision. Could you follow the
5 law in that regard?

6 A. I believe so, yes.

7 Q. Okay. Take a moment and read Special Issue
8 No. 2 to yourself and I'm going to ask you a couple of
9 questions about it.

10 A. (Prospective juror complies.) Okay.

11 Q. That's the question that involves the law of
12 parties. First part of the question asks if he actually
13 caused the death. That would be simple, if you believe that
14 were the facts.

15 The second part is what we get into on
16 the accomplice or the law of parties. If he didn't actually
17 cause the death of the deceased, but intended to kill the
18 deceased or another, or anticipated that a human life would
19 be taken.

20 Again, the law is that if he's not the
21 triggerman, we must -- the facts must show that he
22 anticipated that a life would be taken or he intended that a
23 life would be taken. Oftentimes what we have to do as the
24 State is produce the evidence that we have available, and
25 often the jurors have to draw inferences from a person's

1 intent. In other words, we can't open up a person's mind
2 and say, here is what his intent was. But you can make
3 reasonable deductions by the very actions, how the crime was
4 carried out, how it was planned, what happened before the
5 crime, and what happened after the crime. And these are the
6 types of things that we can argue and jurors can look at to
7 determine if someone actually anticipated that a human life
8 would be taken.

9 An example that we talk about with the
10 bank robbery is, I guess, knowledge of weapons and that sort
11 of thing. Are you comfortable -- do you feel that you can
12 answer that question yes if the State proves it to you by
13 the facts of the case itself and then anything you may have
14 learned in the person's background that might help you?

15 A. Yes, I believe so.

16 Q. Again, the same things that you talked about
17 earlier when we talked about this concept, generally, would
18 those be important to you about the person's participation
19 and that sort of thing?

20 A. Yes.

21 Q. Okay. If you answer that question yes, you
22 then proceed to that last question. That question runs on a
23 little bit. Just take a moment to read that to yourself and
24 I'll ask you a couple of questions on that.

25 A. [Prospective juror complies.]

1 Q. This question is the mitigation question and
2 neither side has the burden of proof. It's the last
3 question that you get. You don't get to it unless you have
4 found the defendant guilty, unless you already believe he's
5 a continuing danger to society, and you believe that he
6 anticipated that a human life would be taken.

7 But it allows the jurors kind of a safety
8 net. It allows you to review everything you have heard from
9 his role in the crime to his background and decide is there
10 sufficient mitigating evidence where you think a life
11 sentence should be imposed rather than a death sentence.
12 They don't get off scot-free, obviously. He has to serve a
13 life sentence. But it allows the jury to show a bit of
14 mercy, depending on the particular facts.

15 We can't tell you what mitigating
16 evidence will be. It will be up to you and the other
17 jurors. You are just required by the Court to keep an open
18 mind to it and if you think something is sufficiently
19 mitigating, you could answer the question that way. If you
20 don't see sufficient mitigating evidence, you can answer it
21 no.

22 Do you think that's a fair question to
23 have in this type of case?

24 A. I believe so.

25 Q. As you sit there today, does anything come to

1 mind which you might view as potentially mitigating
2 evidence?

3 A. Nothing comes to mind immediately, but I still
4 think it's a fair question.

5 Q. Okay. Most people usually don't think of
6 anything when I ask them that and we don't anticipate you
7 have been thinking about these issues, at least I hope you
8 haven't.

9 But we talk to a lot of jurors and we go
10 over different things. You don't have to agree. You don't
11 have to be able to tell us what mitigating would be to you.
12 You don't have to agree with the other jurors. What is
13 mitigating to one juror, may not be mitigating to another.

14 You may hear a case where some guy has
15 four or five PhDs from Harvard and one juror may think it's
16 mitigating because he did something beneficial. And another
17 juror might say that's aggravating. Someone that smart with
18 those kind of opportunities shouldn't commit these murders.

19 We have jurors talking to us, sometimes
20 in these cases you may hear about how a person grew up. We
21 ask about that in the questionnaire. Some people come from
22 bad backgrounds. Maybe they were abused physically, maybe
23 mentally. Maybe they came from a broken home. Some jurors
24 tell us if it's severe, it might be mitigating. Others tell
25 us, I feel bad for them, sympathize, but lots of folks grew

1 up in those situations. Once you become an adult, you have
2 to be held accountable. You can't use that as an excuse.
3 But it could be anything along those lines.

4 Does that strike you one way or the other
5 when we generally talk about the way the person was raised,
6 bad background, that sort of thing?

7 A. Um, I think there are too many really fine
8 people who have come from horrible, horrible upbringings to
9 make that a really serious issue for my consideration. I
10 know a lot of people, you know, are taken -- not taken in --
11 but taken over by that. But it's -- I'm not, you know, too
12 many good people.

13 Q. What happens a lot of times in this type of
14 question or actually in any of these Special Issues is you
15 sometimes hear from experts, psychologists, or psychiatrists
16 that come in and they may give an opinion on mitigation, why
17 a person acts the way they do, or at least their opinion as
18 to why they do, or maybe on Special Issue No. 2 or the
19 future dangerousness issue. The defense calls those
20 experts. Sometimes the State does. You may hear from both
21 sides.

22 But people feel differently about those
23 types of experts. Some people put a whole lot of stock in
24 what a psychologist or psychiatrist says. They really
25 respect them. Other jurors more or less close the door.

1 They call those the soft sciences and really don't have much
2 respect for that. They look at it as voodoo, almost. And
3 then we have other jurors that say that's another piece to
4 the puzzle. I will look at it. I'm not going to give it
5 any particular weight. It's not any more important than any
6 other piece of evidence, but I'll be happy to look it at.

7 Do you have any opinions on those types
8 of experts?

9 A. Um, I think you can probably find an expert to
10 support whatever opinion you want to put forth. That
11 doesn't mean they are not worth anything, but I think you
12 have to listen to them and see where they overlap and where
13 they diverge and kind of look at that.

14 Q. Like you would any other witness, I guess?

15 A. I suppose so. That's correct.

16 Q. The point of this question, I guess, is on
17 this Special Issue 3, is keeping your mind open to it. If
18 there is that sufficient mitigating evidence and you
19 recognize it and you feel that it's sufficient where you
20 would say a life sentence should be imposed, you can answer
21 it that way. If you don't, you can answer it no.

22 Do you feel that you could keep your mind
23 open to that Special Issue No. 3 and consider that type of
24 evidence and then answer the question according to how the
25 evidence comes out?

1 A. I believe I could, yes.

2 Q. Even though you found him guilty and you think
3 he's a continuing danger and anticipated a death would
4 occur, facts might show you, whatever they may be, and you
5 don't have to tell us what they are, that a life sentence
6 may be the just penalty rather than a death sentence, you
7 could answer it that way?

8 A. Well, I don't believe it would be easy, but
9 putting a continuing threat opposite mitigating
10 circumstances is kind of an interesting question.

11 Q. Yeah. And a lot of people tell us that. Like
12 on one hand I've already found he's dangerous and on the
13 other hand it might be mitigating. And it's kind of
14 interesting how this question first came around.

15 There was a case called Pennery, which
16 has been tried several times, where the defense alleged that
17 he had some mental retardation. It wasn't his fault. He
18 was born that way. In fact, they believed the mental
19 retardation made him more dangerous, so that jurors could
20 actually use his background, which wasn't his fault, his
21 mental defect, to answer question No. 1 yes. But there was
22 no mechanism to show any type of mercy to counteract that.
23 And this is the question they came up with along those
24 lines.

25 A. I suppose in that case it's a good question.

1 Q. And that's the point. There might be some
2 facts that you can't articulate now and might not know about
3 and then come up with them. I had one juror in East Texas,
4 I thought, that came up with the best metaphor for these
5 questions. He said it's like a window and once you found
6 him guilty, it starts closing. And he says question No. 1,
7 it gets closer; 2 closer; and he said, now, if I've asked
8 that many questions, the window is open about that much, but
9 it's still open. Some jurors may have it open that much and
10 some that much, but as long as the window is open, you will
11 consider it is the point of law. You don't know what the
12 facts will be at this point in time. You just have to tell
13 the Court, I will keep my mind open to it and make my
14 judgment once I hear everything and I'll decide back in the
15 jury room. Do you feel that you can do that?

16 A. I think it's part of the responsibility that
17 we talked about.

18 Q. Let me talk to you about a few rules that
19 apply to every criminal case and I think that you will be
20 pretty familiar with these because you grew up with these.

21 The presumption of innocence. Every
22 person charged with a crime is presumed to be innocent at
23 the beginning of that trial and the State has to overcome
24 that presumption. The fact that he's been arrested, tried,
25 or there has been publicity on the case is no evidence of

1 his guilt. The evidence must come here in the open
2 courtroom. And you have to start that defendant out with
3 that presumption and require us to prove to you beyond a
4 reasonable doubt that he's guilty. Could you follow that
5 rule of law?

6 A. Yes, sir.

7 Q. Okay. The burden of proof is on this table.
8 It never shifts to the defense. They don't have a burden of
9 proof. They are not required to prove to you that he's
10 innocent or these questions should be answered in any way.
11 I think common sense will tell you, you would anticipate
12 that they will try to do that and ask questions and make
13 arguments, but they don't have to. The burden of proof
14 never leaves this table.

15 And if they don't do a thing, don't ask a
16 question -- I don't anticipate this will happen. They could
17 work crossword puzzles, if they wanted to. But if you had a
18 reasonable doubt after we rested our case, you would be
19 obligated to find the defendant not guilty, because we
20 didn't prove the case. You can't turn around and require
21 them to prove his innocence to you, because that burden of
22 proof never leaves this table. Could you follow that part
23 of the law?

24 A. Yes, sir.

25 Q. That burden of proof goes to every portion of

1 the indictment, every element of the indictment. If you
2 have a reasonable doubt on any portion of the indictment,
3 you are obligated to find him not guilty. One example would
4 be the identity. If we didn't prove in your mind who
5 committed this crime, obviously you are going to find him
6 not guilty. That's an easy example.

7 But that law also goes to other portions
8 of the indictment, such as the county where it occurred.
9 Let's say maybe a crime occurred near the borderline and you
10 feel the evidence showed it actually happened in Tarrant
11 County, rather than Dallas County. It may be a technicality
12 to you, but under the law it's just as big a part of the
13 case as the identity of the defendant. And if you had a
14 reasonable doubt, you would have to find the defendant not
15 guilty.

16 Again, I don't anticipate that would
17 happen. I just kind of use that as an example out there to
18 demonstrate the law. If it did happen and we did that poor
19 of a job in preparation, you could go upstairs, I'm sure,
20 and have us terminated. But you can't help us out. You
21 can't give us an upper hand or give us a hand on one of the
22 elements. Reasonable doubt on anything is a not guilty.
23 Could you follow that rule of law?

24 A. Yes, sir.

25 Q. The Fifth Amendment applies in every criminal

1 case. The criminal -- in a criminal case, if a defendant
2 wants to testify, he can, and you judge him like any other
3 witness. If he chooses not to testify, though, the Court
4 would instruct you that you can't hold that against him.
5 There could be numerous reasons why someone may not want to
6 testify. They could be guilty and they look very guilty.
7 They may not be guilty, but they may be low educated. They
8 may have a speech impediment. They may act very nervous in
9 front of a jury, and might look guilty when they're not.
10 They may simply be following the advice of their lawyer that
11 tells them not to.

12 You can't penalize a person if they
13 choose not to testify in their own case. The Court would
14 just tell you, you have to judge the case based on what you
15 did hear. Could you follow that rule of law?

16 A. Yes, sir.

17 Q. You often hear from police officers. They are
18 like any other witness. You may have a lot of respect for
19 them, but you can't start them out ahead of any other
20 witnesses. You have to wait and judge them on the witness
21 stand like you would any other witness. Do you feel that
22 you can do that?

23 A. Yes, sir.

24 Q. You often hear about parole laws. Gets a lot
25 of publicity, sometimes. The Court will instruct you in a

1 capital case that a life sentence means forty calendar years
2 have to be served day for day before they become eligible
3 for parole. And he would also instruct you that you can't
4 consider the parole laws in any way, that you just have to
5 consider a life sentence, a life sentence. Do you feel that
6 you can do that?

7 A. Yes, sir.

8 Q. Sometimes in a capital murder case you may
9 find the defendant guilty of what we call a lesser included
10 offense. For instance, if we allege murder during the
11 course of a robbery, you may have a reasonable doubt about
12 the murder or whether he committed the murder, but you may
13 believe the evidence showed he committed aggravated robbery.
14 That would change the penalty range. You wouldn't have
15 these questions. You would simply have a term of years
16 you'd have to decide from 99 years or life, all the way down
17 to five years in prison or anywhere in between.

18 Again, you could assess the penalty just
19 based on the facts of that particular case. You have to
20 keep your mind open to that full range and then just make
21 the proper assessment. Life, if you think it's a life case,
22 or five years in prison, if you think it's a five-year case,
23 or anywhere in between.

24 Can you keep your mind open to that full
25 range of punishment and give a full consideration to both

1 ends of the penalty range?

2 A. Yes.

3 Q. Okay.

4 MR. SHOOK: Can I have one moment, Judge?

5 THE COURT: Yes.

6 Q. (By Mr. Shook) Mr. Nelson, I think we've gone
7 over lots of stuff pretty quickly, but I think that I have
8 covered everything I wanted to. Do you have any questions
9 over anything we've gone over?

10 A. I don't believe so.

11 Q. I appreciate your time and attention.

12 MR. SHOOK: And that's all the questions
13 the State has, Judge.

14 THE COURT: Mr. Sanchez, do you have any
15 questions?

16 MR. SANCHEZ: Yes.

17 CROSS-EXAMINATION

18 BY MR. SANCHEZ:

19 Q. Good afternoon. Do you need any water?
20 You've been talking up there for a while, so you need
21 something to drink?

22 A. Yes, please.

23 Q. My mouth gets a little dry after talking for a
24 while, especially when you're sitting in the hot seat. Is
25 that better?

1 A. Much better, thank you.

2 Q. You say you grew up in Chicago. Are you a
3 baseball fan?

4 A. Cubs fan, was.

5 Q. You were?

6 A. Yeah, I don't follow baseball much anymore.

7 Q. You don't like the White Sox?

8 A. No. They're in a different part of town.

9 Q. They are both doing quite well this season.

10 So you never know, could be a Chicago World Series, who
11 knows. I just want to follow up on some of your answers and
12 talk to you a little bit about your feelings on certain
13 aspects of the law.

14 A lot of times we just ask you -- we tell
15 you this is the law, can you follow it, and I don't think
16 nobody likes to say they wouldn't. But I like to ask people
17 what really, in their own minds, they would be thinking
18 about, things that would affect your decisionmaking.

19 Just to follow up on the questions about
20 this case that you were arrested on when you were younger.
21 Did you say you went to trial yourself or --

22 A. This was west Des Moines, Iowa, and one guy
23 was with us, his father was a good friend of the Judge. He
24 and one other guy never went to court. Several of us
25 actually had to go to court and we couldn't make the Judge

1 understand what an open house was, either, and basically he
2 said get out and I don't ever want to see you in my court
3 again or I'll throw you in jail for 60 days.

4 Q. So you didn't have to go out and hire an
5 attorney? You just represented yourself?

6 A. No, it was west Des Moines, Iowa, in 1966.

7 Q. So you were not on any kind of long probation
8 or anything like that?

9 A. No.

10 Q. I just wanted to make that clear. On your
11 questionnaire, also, do you have it in front of you or did
12 you get a copy of that?

13 A. Yes.

14 Q. If you will look on page 4, it's been a while
15 since you filled this out. But if you look on page 4 near
16 the bottom you wrote -- one of the questions was, what would
17 be important to you in deciding whether a person received a
18 death or life sentence in a capital murder case and you
19 wrote no.

20 A. I looked at that and I couldn't understand it
21 when I reread it. And I think what I did was when I
22 answered the question, I left off the word "what."

23 Q. I'm sorry?

24 A. I left off the word "what". So you read that
25 without the word "what", would it be important to you?

1 That's the only reason I could think of to answer it that
2 way.

3 Q. What would be your answer, now that you have
4 read the sentence correctly?

5 A. I think a lot of the things that we talked
6 about, about what went into the -- what went into the crime,
7 what went into the action, what the response was, what the
8 participation was.

9 Q. And the reason I asked is because we get -- we
10 talk to a lot of people. We're going to talk to a lot of
11 people and we've already talked to quite a few. There's
12 people that come up here and tell us, you know, as far as
13 I'm concerned, you know, if I find somebody guilty of a
14 capital murder, then in my mind, in my own mind, that's a
15 death penalty. I'm not going to really look at these issues
16 too carefully. In my mind I've already made up my mind that
17 that person deserves to be put to death and you are going to
18 have to prove to me somehow why that person shouldn't be put
19 to death.

20 Of course, we have people that say the
21 opposite. Where do you fall in regards to that?

22 A. I'm kind of a -- kind of a prove it to me
23 person. I think everybody has preconceived ideas as to what
24 ought to happen, but at some point you have to ask yourself,
25 you know, can I prove it to myself that I'm right or can you

1 prove it to me that I'm right or can you prove it to me that
2 I'm wrong, And I think, you know, that's where the
3 responsibility comes in. And in taking, you know, taking
4 your feelings and then believing that they're right because
5 of something other than just, you know, what's in your heart
6 or something like that.

7 Q. Okay. Then from your answer are you telling
8 me that basically you, once the State has proven to you
9 beyond a reasonable doubt that someone is guilty of capital
10 murder, you would still require them to prove to you the
11 other issues they have to prove to you or in your mind --

12 A. I think so.

13 Q. Okay. Now, I also want to take you -- a lot
14 of times we get stuck talking about the punishment phase
15 right off the bat. I want to bring you back all the way to
16 the beginning of the trial. As we sit here right now, it's
17 an allegation.

18 And you have also indicated that you did
19 hear some things and you said that you didn't hear a lot of
20 facts about the case. But based on what you did hear, did
21 you form any opinion as to whether Mr. Murphy is already
22 guilty of what they're charging him with?

23 A. No. To be honest with you, I don't remember a
24 lot of names. I don't remember Mr. Murphy's name from what
25 I heard and/or read. I just kind of read generalities about

1 what was going on.

2 Q. And those generalities kind of match what the
3 allegations are?

4 A. Pretty much, yeah.

5 Q. Also, I know you have looked at it before you
6 walked in here today, was the actual allegation of -- the
7 indictment --

8 A. Yes.

9 Q. -- that you looked at. And, as you know, the
10 indictment is no evidence of guilt. Okay? The indictment
11 is just the charging instrument or something that gives us
12 notice and Mr. Murphy notice as to what he's charged with
13 and the way they are charging him. Does that make sense to
14 you?

15 A. Yes.

16 Q. Okay. Because we get people in here sometimes
17 that say, you know, the fact that he's been charged,
18 arrested, accused, and the Grand Jury has decided to indict
19 him on this, then in my mind that already shows me that he's
20 guilty of something. Where there's smoke, there's fire.
21 How do you feel about that?

22 A. Well, I recently asked somebody what the Grand
23 Jury was all about and it kind of opened my eyes to the fact
24 that --

25 Q. What did you think?

1 A. Pardon?

2 Q. What did you think?

3 A. I was surprised.

4 Q. What were you surprised at?

5 A. I was surprised that you can make all kinds of
6 allegations that have no support at all to get an
7 indictment. But that doesn't mean that -- some of those
8 things you can't hope to say in court, but, you know, it's
9 just part of the system, I guess.

10 Q. And that's what the law would be. The Judge
11 would instruct anybody that sits on the jury that somebody
12 who has been arrested, charged, or even indicted is no
13 evidence of guilt and you wouldn't be able to use that
14 against the person, the fact that they've been indicted.
15 Because all the Grand Jury does is decide whether there's
16 enough evidence to proceed with the case.

17 A. Uh-huh.

18 Q. If there's probable cause to proceed and not
19 whether they are guilty or not.

20 A. Yes.

21 Q. You agree with that?

22 A. Yes.

23 Q. And part of the indictment, as Mr. Shook
24 explained to you, is the elements or everything they have to
25 prove in their case beyond a reasonable doubt in order to

1 find somebody guilty of this charge. But not only do they
2 have to prove every element exactly as it's in here, but
3 they have to prove it exactly as they have written it up.

4 He used the example of, you know, if we
5 alleged it happened in Dallas County and it actually
6 happened in Tarrant County, you have to find him not guilty.
7 And I think that's an easy one for people to agree with.
8 But they also have to prove the manner in which it happened,
9 in which -- they have to prove the manner in which they say
10 this happened that they give us notice of in their
11 indictment.

12 In other words, here they are alleging
13 that the complainant was shot. But if you are sitting there
14 during trial and it's proven to you beyond a reasonable
15 doubt that the person was stabbed to death, not shot, you
16 would have to find that person not guilty. You understand
17 that?

18 A. Yes.

19 Q. Okay. I mean, some people say to me, well,
20 you have proven capital murder either way, but I can just
21 let -- that's why I would find him guilty, anyway. I would
22 give the State what they're asking for, anyway. How do you
23 feel about that?

24 A. I think it would be wrong.

25 Q. You would find him not guilty at that point?

1 A. I think you would have to.

2 Q. And you wouldn't have any problem with that?

3 A. Not really.

4 Q. We get some people in here that say, look, I
5 have a real big problem with that, and I would find him
6 guilty anyway. So that's why I have to ask these questions
7 to be sure.

8 A. Okay.

9 Q. Getting to the Special Issues, jumping ahead
10 now. As Mr. Shook has told you, the first part of the trial
11 is just whether you find him guilty or not of capital
12 murder. Okay? And at that point, if you do find him guilty
13 of capital murder, then the only sentence right there is
14 automatic life. Okay? He's sitting on a life sentence,
15 unless they can prove those issues to you and yes, yes, and
16 no, would be the answers.

17 And those issues have to be answered
18 independently of one another. Okay? In other words, some
19 people think if I find him guilty of capital murder, then
20 Special Issue No. 1 in my mind has automatically been
21 answered. Okay? I'm automatically going to believe that
22 person is a continuing threat to society. How do you feel
23 about that?

24 A. Um, well, I don't think one follows the other.
25 I mean, I don't think it's a given. But I --

1 Q. Would you be leaning that way already?

2 A. Would I be --

3 Q. You have to take into consideration --

4 A. I didn't hear the words used. Would I be
5 leaning?

6 Q. Would you already be leaning toward answering
7 that in the affirmative just based on the fact that you
8 found him guilty of capital murder or would you be able to
9 stop yourself and answer that independently?

10 A. To be perfectly honest with you, I might be
11 leaning toward that if he were already found guilty, but I
12 also think that I would have to stop myself. That's the --
13 that's the weight of the whole thing.

14 Q. And in Special Issue No. 2, of course --
15 really what I'm getting at, a lot of people say, if I have
16 already found him guilty of capital murder, then these
17 answers are going to be real easy to me. In other words,
18 I'm going to find he's a continuing threat and I'm going to
19 find that he anticipated that a human life would be taken.

20 So in Special Issue No. 2 -- I don't know
21 if Mr. Shook covered this or not, but in the first part of
22 trial if you found somebody guilty of the parties, as it was
23 explained to you, they have to prove beyond a reasonable
24 doubt that that person should have anticipated that a human
25 life would be taken. And that makes sense to you, right?

1 A. Could you --

2 Q. When the State is prosecuting somebody under
3 the law of parties and you're an accomplice --

4 A. Uh-huh.

5 Q. -- all they have to prove to you at that
6 portion of the trial is that the person that's on trial, the
7 defendant, should have anticipated that another life would
8 be taken in the course of his participation. Okay? But on
9 -- when you get to the punishment stage in Special Issue No.
10 2, they have to prove to you that that person actually
11 anticipated that a human life would be taken.

12 You see the difference? Should have
13 known or should have anticipated versus actually
14 anticipated?

15 A. Yes, I understand the difference.

16 Q. And that's a higher burden?

17 A. I believe so.

18 Q. Some people say, well, if you should have
19 known, that's good enough for me. How do you feel about
20 that?

21 A. I really don't think that should have known
22 and anticipated -- you know, anticipated is kind of a gray
23 word. No, I don't think they are the same, but I think they
24 are close. And, you know, that's why you have to give it
25 some thought.

1 Q. Okay. Would you hold them to proving to you
2 that he actually anticipated that a human life would be
3 taken or would should have anticipated be enough for you?

4 A. No. If it says anticipated, then I think
5 that's what I would have to ask of them.

6 Q. And anticipation is not really what I'm keying
7 in on. What I'm really trying to ask is would you make them
8 prove to you that not only he should have known or he should
9 have anticipated that a human life would be taken and make
10 them prove to you that he actually anticipated a human life
11 would be taken. See the difference?

12 A. Uh-huh. I think if I were going to answer the
13 question, that he would have to prove that.

14 Q. Okay. And, of course, in asking that
15 question, like I said, you can't get into somebody's mind
16 all the time. And there are some people that would say,
17 well, in order for me to answer that question, I may need to
18 hear from Mr. Murphy himself. What do you think about that?

19 A. Um, I don't know that I would have to hear
20 from him.

21 Q. Would you like to hear from him?

22 A. Sure.

23 Q. And if you didn't hear from him, would that
24 somehow --

25 A. No.

1 Q. -- tend to make you think something?

2 A. No.

3 Q. Okay. How about in Special Issue No. 3? At
4 this point you have found him guilty of capital murder,
5 found he was a continuing threat to society, and he actually
6 anticipated that a human life would be taken. You have
7 already answered those questions in the affirmative and you
8 are at Special Issue No. 3, basically the last step before
9 someone receives the death penalty.

10 At that point would you have to or would
11 you like to hear from Mr. Murphy himself and to explain to
12 you his life or reasons why his life should be spared?

13 A. Yes. I mean -- I think it would add
14 something, but I don't think that it's necessary.

15 Q. If at that point you have already made those
16 decisions, you don't hear from Mr. Murphy, would that
17 somehow lead you to believe that somehow he may not care if
18 his life is spared or he's hiding something?

19 A. No.

20 Q. Would you in any way allude to it in your
21 decisionmaking?

22 A. No.

23 Q. Because that's what the law would be, then.
24 People have the Fifth Amendment right --

25 A. Yes.

1 Q. -- not only in the first, first part of the
2 trial, but also throughout the trial in the punishment
3 stage. And -- but there are some people who say, once I've
4 got to the punishment stage, I expect somebody to say
5 something. We're here deciding his life or death and I want
6 him to speak up. And if he didn't, well, I may count that
7 against him somehow.

8 A. I don't believe I would.

9 Q. Okay. And when you say you don't believe you
10 would, of course, that leaves a possibility that you would.
11 So I'm not trying to --

12 A. I don't have the question before me.

13 Q. But -- but if you did have the question before
14 you, is there a possibility?

15 A. I believe I wouldn't, so I don't have the
16 question before me so -- you are asking me to answer a
17 question about a question without -- without all of the rest
18 of the information. And I think that's part of the
19 responsibility is to, even though there's every part, you
20 know, it all goes into one big --

21 Q. I understand it's hard to give an answer right
22 now, because I can't preview the case for you. I can't tell
23 you what's going to happen. But as somebody representing
24 Mr. Murphy, we have to ask these questions.

25 A. I understand.

1 Q. We have to find out if it's a possibility that
2 somebody could allude to it or hold it against him somehow,
3 even though the law would be that they are not to do that.

4 A. I would think that's part of the job is what
5 the law says. Then that's -- at that point it's not so
6 important what I believe.

7 Q. I'm almost done. I will give you that
8 preview. Again, Special Issue No. 3, are you really going
9 to be able to consider at that point any kind of mitigating
10 evidence based on the fact you have already found him guilty
11 of capital murder and you have answered the first two
12 questions yes? Can you tell this Court, can you tell us,
13 that at that point you would really be able to consider any
14 type of mitigation or would your mind be closed to it?

15 A. No. I don't think my mind would be closed to
16 it. But, you know, since I have no idea of what it might
17 be, it's hard for me to tell you that it, you know, would
18 influence me. But I truly believe that I could look at the
19 question with an open mind, with my open mind.

20 MR. SANCHEZ: That's all the questions I
21 have, Your Honor.

22 THE COURT: Thank you, sir. If you
23 would, take a short break and wait for us outside and we'll
24 have you back in a few minutes.

25 [Prospective juror out]

1 THE COURT: What says the State?

2 MR. SHOOK: No challenge for cause.

3 THE COURT: What says the defense?

4 MR. SANCHEZ: No challenge for cause.

5 MR. SHOOK: We'll accept the juror.

6 MR. SANCHEZ: We will use our strike.

7 THE COURT: Use your strike.

8 [Prospective juror in]

9 THE COURT: Mr. Nelson, thank you for
10 your service here today and your very thoughtful answers.
11 This case is not for you on this particular go round, so you
12 have been excused from this particular case. We hope to see
13 you back down here again sometime. We appreciate very
14 thoughtful people and thoughtful answers. It's just that
15 this case is not yours. Thank you very much.

16 [End of Volume]

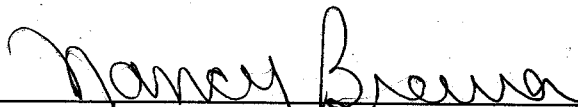
1 STATE OF TEXAS *

2 COUNTY OF DALLAS *

3 I, NANCY BREWER, Official Court Reporter for the 283rd
4 Judicial District Court, do hereby certify that the above
5 and foregoing constitutes a true and correct transcription
6 of all portions of evidence and other proceedings requested
7 in writing by counsel for the parties to be included in this
8 volume of the Reporter's Record, in the above-styled and
9 numbered cause, all of which occurred in open court or in
10 chambers and were reported by me.

11 WITNESS MY OFFICIAL HAND on this the 4 day of

12 March, 2004.

13
14 

15 NANCY BREWER, CSR, NO. 5759
16 Expiration Date: 12-31-04
17 Official Reporter, 283rd JDC
18 Frank Crowley Crts. Bldg. LB33
19 133 No. Industrial Blvd.
20 Dallas, TX 75207
21 (214) 653-5863
22
23
24
25

74851

REPORTER'S RECORD

VOLUME 14 OF 61 VOLUMES

TRIAL COURT CAUSE NO. F01-00328-T

STATE OF TEXAS * IN THE DISTRICT COURT
VS. * DALLAS COUNTY, TEXAS
PATRICK HENRY MURPHY, JR. * 283RD DISTRICT COURT

INDIVIDUAL VOIR DIRE

FILED IN
COURT OF CRIMINAL APPEALS

MAR 9 2004

Troy C. Bennett, Jr. Clerk

On the 10th day of September, 2003, the following
proceedings came on to be heard in the above-entitled and
numbered cause before the Honorable Vickers L. Cunningham,
Sr., Judge Presiding, held in Dallas, Dallas County, Texas.

Proceedings reported by machine shorthand.

ORIGINAL

A P P E A R A N C E S

APPEARING FOR THE STATE

Mr. Toby Shook
SBOT NO. 18293250
And
Mr. Bill Wirskye
SBOT NO. 00788696
Assistant District Attorneys
133 No. Industrial Blvd.
Dallas, Texas 75207
Phone: 214/653-3600

APPEARING FOR THE DEFENDANT

Ms. Brook Busbee
Attorney at Law
SBOT: 03488000
703 McKinney Ave. Ste. 312
Dallas, TX 75202
214/754-9090

Mr. Juan Sanchez
Attorney at Law
SBOT: 00791599
5630 Yale Blvd.
Dallas, TX 75206
214/365-0700

PROSPECTIVE JUROR INDEX

<u>PROSPECTIVE JUROR</u>	<u>CRT.</u>	<u>STATE</u>	<u>DEFENSE</u>	<u>VOL.</u>
Lisa Crawford	4	6	35	14
Don Jones	48	49	75	14
Roy Davis	95	96		14
David Evans	104	106	134	14
Nancy Carney	155	157	193	14

P R O C E E D I N G S

THE COURT: Ms. Crawford.

[Prospective juror in]

THE COURT: Good morning, how are you?

PROSPECTIVE JUROR: Fine.

THE COURT: Your name is Lisa Ann
Crawford? You were actually second to be interviewed this
morning, but since you were here early, you get to go first.
How is that?

PROSPECTIVE JUROR: Very well.

THE COURT: Did you have enough time to
review the orientation guide I provided to you?

PROSPECTIVE JUROR: All but about two
pages, yes.

THE COURT: All but two pages. Was that
the last two?

PROSPECTIVE JUROR: Yes.

THE COURT: The last one has my name on
it and the attorneys' names, Mr. Toby Shook and Bill Wirskye
are the two prosecutors in this case. They work for the
Elected District Attorney Bill Hill. Ms. Brook Busbee and
Juan Sanchez are the attorneys representing the defendant,
Mr. Murphy. The back page is the indictment in this case
and you might want to look at that real quickly. I'll let
you read that.

1 PROSPECTIVE JUROR: (Prospective juror
2 complies.) Yes.

3 THE COURT: And then also I provided you
4 a copy of your questionnaire that you filled out for us last
5 May. It's still warm. It just came out of the printer. I
6 maintain these as a digital file. That way I can control
7 security over your information.

8 This morning's opportunity is an
9 opportunity for the lawyers to go over the law with you. I
10 know your first reading through that, you probably thought,
11 all these laws, how do they interrelate? You don't have to
12 understand them all right now. That's what this opportunity
13 is for. They are going to explain the law to you, give you
14 examples. At the end of the process, my job is to make
15 sure, number one, that you understand the law. And we'll
16 talk as long as we need to, to get you to that point. And
17 the second is, if you understand the law, can you follow the
18 law? Those are the two main questions I have to answer this
19 morning.

20 PROSPECTIVE JUROR: Yes, sir.

21 THE COURT: The only question that I have
22 for you at this time is can you serve this Court beginning
23 November 10th for the two weeks that we talked about?

24 PROSPECTIVE JUROR: To my knowledge, yes,
25 sir.

1 THE COURT: Very well. They are going to
2 be asking you questions about some of the issues covered in
3 the questionnaire. That's why I provided it for you, in
4 case they want you to look back at your answers. Who will
5 inquire for the State? Mr. Wirskye?

6 MR. WIRSKYE: May it please the Court.

7 LISA CRAWFORD,
8 having been duly sworn, was examined and testified as
9 follows:

10 DIRECT EXAMINATION

11 BY MR. WIRSKYE:

12 Q. How are you this morning, Ms. Crawford?

13 A. Very well, thank you.

14 Q. Bear with me. I haven't had enough caffeine
15 yet this morning, so I may be a little slow. So I'll be the
16 assistant DA that will be talking to you for the next few
17 minutes. What I will do is visit about some of the
18 information that you were kind enough to give us on the
19 extended questionnaire, talk to you a little bit about your
20 thoughts and feelings about the death penalty, and then
21 maybe talk a little bit about the law and some of the rules
22 that apply in a case like this where the State is seeking
23 the death penalty. If you have any questions, just let me
24 know.

25 Because this is a case where we're

1 seeking the death penalty, the law requires us to talk to
2 jurors individually. So the best way we know to do that is
3 put you up on the witness stand and I know it's kind of
4 unnatural and a bit intimidating. You may feel like you are
5 on trial, but you are really not. No right or wrong
6 answers. Each side is just curious about what you think and
7 we really just want your honest thoughts and opinions.

8 You told us that you are generally in
9 favor of the death penalty; is that right?

10 A. Yes, sir.

11 Q. Okay. Why do you think we should have a death
12 penalty as an option in our state?

13 A. The first thought that comes to mind would be
14 to cut down on money.

15 Q. That's fine. We hear that a lot.

16 A. Actually, to me, people -- I have to give
17 everybody the opportunity to be able to change.

18 Q. Okay.

19 A. To perform better than before. If they are
20 given that opportunity and they do not show success, then I
21 believe in certain circumstances that it should be so.

22 Q. I notice reading your questionnaire you talk
23 about it would be a case-by-case determination?

24 A. Yes.

25 Q. When you think of an appropriate-type case for

1 the death penalty, what comes to mind?

2 A. Wow --

3 Q. Are there any particular set of facts or maybe
4 even a case you heard or read about, a high profile case in
5 the media?

6 A. Nothing sticks out, no, sir. I -- to be
7 honest, I haven't -- like I said, everything is a case by
8 case. I would have to know all of the details that I
9 possibly could to determine that.

10 Q. Okay.

11 A. Um, I guess if someone walked up to another
12 and in their mind this is exactly what I'm going to do
13 unconditionally, no matter what the circumstances are, no
14 matter what the repercussions are, I guess you could say,
15 that would be an unconditionally, that's what he was going
16 to do, set out to do to the person.

17 Q. Premeditated?

18 A. Exactly.

19 Q. As you may know from briefly looking at that
20 packet of law that the Judge gave you, in Texas the death
21 penalty is only available as an option for murder cases and
22 then only certain types of murder cases. Kind of following
23 up on your example, we've been in court, I guess, for two
24 weeks doing this now, and I've been sitting next to this guy
25 and he did something to annoy me yesterday.

1 So I went home last night and thought
2 about it, premeditated it, and said, you know, when I show
3 up in court tomorrow in front of all these bailiffs and the
4 Judge and attorneys, I'm going to shoot him ten times in the
5 head. And I come in and do that, shoot him ten times in the
6 head and kind of laugh about it after I do it. And, of
7 course, the bailiffs rush in and arrest me. That's kind of
8 what you described.

9 A. Yes, sir.

10 Q. That wouldn't be a death penalty in Texas,
11 even though it was premeditated, even though it was brutal,
12 for no reason, that type thing.

13 In Texas you have to -- kind of one way
14 to think of it is you have to have a murder plus something
15 else. If you murder a police officer on duty, a fireman on
16 duty, a prison guard, a child under six, or a mass murderer,
17 serial murderers, that type of thing. Or if you murder
18 someone, an intentional murder in the course of another
19 crime, another felony, like a robbery or burglary or sexual
20 assault, rape, that type of thing.

21 So we actually just reserve the death
22 penalty for a very limited type of murder case in Texas.
23 What do you think about that, kind of the scheme we have
24 here in Texas?

25 A. I think that you are saying it's conditioned,

1 as far as that goes, it's conditioned on the particular
2 occupation or age or, I mean, am I understanding that?

3 Q. It's got to be a murder plus some other
4 element, some other element that elevates that particular
5 case to a capital murder case. And there could be some very
6 violent people who -- say I've been to the penitentiary
7 three times and I commit that murder. The worst that could
8 happen to me is a life sentence, you know.

9 A. Okay.

10 Q. Does that sound fair to you?

11 A. Yes.

12 Q. Okay. We ask people on the questionnaire, I
13 guess, to kind of rank themselves on a scale of 1 to 10, 1
14 being the least and 10 being the most, kind of how strongly
15 they feel about the use of the death penalty and you were
16 kind of right in the middle.

17 A. Right.

18 Q. And you gave yourself a 5.

19 A. Right.

20 Q. I was wondering what that means to you,
21 because different numbers mean different things to different
22 people. But when you gave yourself a 5, what were you
23 thinking?

24 A. Pretty much I was thinking an individual --
25 that's pretty much where I am is individual -- I mean, I'm a

1 parent and I have to deal with two children. I have to,
2 when I discipline this one child, I have to look at him,
3 what his background is, the way I can deal with him, and I
4 make my decision as to what he did. And if it had anything
5 to do with what he has done in the past, then that's the way
6 I discipline. And so, therefore, I'm on a case by case.

7 Q. Sounds like that 5 that you gave yourself is
8 kind of a recognition you just have to look at the case?

9 A. Exactly.

10 Q. Let me run something else past you. You know,
11 oftentimes when we think of murder or capital murder, like
12 murder in the course of robbery, we think of a guy going in
13 with a gun in the 7-Eleven and holding up the 7-Eleven and
14 shooting and killing the clerk --

15 A. Uh-huh.

16 Q. -- and getting off with the money. Oftentimes
17 crimes are not committed by just one person. You would have
18 a group or gang of people, more than one person that commits
19 a crime.

20 A. Okay.

21 Q. Even capital murder. We talked to a lot of
22 people, such as yourself, who are in favor of the death
23 penalty, but they start drawing some lines. Let me tell you
24 what I mean by that.

25 In Texas capital punishment is not just

1 reserved for the person that actually caused the death, like
2 the triggerman, the person that actually pulled the trigger
3 and caused the person's death. They can, of course, be
4 convicted of capital murder and ultimately face the death
5 penalty.

6 But if they had an accomplice with them
7 or more than one accomplice who didn't actually pull the
8 trigger, who was not a triggerman, who didn't cause the
9 death, but under certain facts and circumstances those
10 accomplices could also be convicted of capital murder and
11 potentially face the death penalty. And a lot of people,
12 even people that feel very strongly about the death penalty,
13 would just limit the death penalty to the triggerman, the
14 person that actually caused the death, actually pulled the
15 trigger. And if it were up to them, they would take the
16 death penalty option off the table for the accomplices, the
17 nontriggermen.

18 And they tell us various reasons, some, I
19 guess, morally or religious basis, feel that the death, you
20 know, taking a life, the death penalty is only justified
21 when a person has taken a life actually. And people feel
22 different ways about that.

23 What do you think about that? Would you
24 reserve the death penalty just for the triggerman or --

25 A. Not necessarily. I guess the first thing that

1 comes to mind is there's no way that two people can pull the
2 same trigger at the same time on a gun. Back to the example
3 -- and this is -- I may use this a lot because this is the
4 only way that I can give an example.

5 If one child is the one who actually in
6 my mind wrote on the wall, but the other one gave them the
7 Crayola, they did it together, I guess you could say.

8 Q. Sure. You will hold both responsible?

9 A. Both of them would be responsible.

10 Q. Okay. So you wouldn't, I guess, automatically
11 take the death penalty off the table for a nontriggerman or
12 accomplice? It would --

13 A. Correct.

14 Q. -- depend on the facts --

15 A. Yes.

16 Q. -- case by case basis, that type thing? Let
17 me give you an example and see what you think about this
18 one. Let's say Mr. Shook and I and a third friend of ours
19 decide we're going to rob a bank. We sit down and make up a
20 plan to rob that bank. We've got one gun, a pistol, and
21 Mr. Shook is going to take it in and hold up the teller.
22 I'm going to go in unarmed and have a bag and collect the
23 bank's money so we can make our getaway. And our third
24 friend is going to drive us up there in his car and wait
25 outside and keep a lookout for the cops and maybe signal us

1 by tapping on the horn or something if the cops show up.

2 And that's the plan we come up with.

3 And when we go to do that bank robbery,
4 for some reason or for no reason or maybe Mr. Shook sees a
5 teller going for an alarm, a silent alarm, or I see that and
6 I tell them that, Mr. Shook shoots and kills the bank
7 teller. Okay? He's committed an intentional murder during
8 the course of a robbery, which we talked about is capital
9 murder in Texas. He's the triggerman. He could be
10 convicted of capital murder and ultimately receive the death
11 penalty.

12 I was an accomplice. I didn't have a
13 gun. What do you think about a person in my shoes in that
14 example when it comes to the death penalty?

15 A. How would you know what he was thinking, as
16 far as -- or what -- how would you know what he saw, as far
17 as going for the alarm, unless you discussed it. That's the
18 premeditated thing.

19 Q. Uh-huh.

20 A. You cannot at that point necessarily be
21 responsible for his actions or his choices. Yes, you should
22 be punished for hanging out with them, for going along with
23 his plan, but you cannot be responsible for what actions he
24 took and what thoughts he has. He's responsible for his
25 own.

1 Q. Okay. Sounds like because I didn't have any
2 intent that that murder happen or it wasn't premeditated,
3 that would pretty much take the death penalty off the table
4 for me in that fact scenario?

5 A. You were hanging out with him.

6 Q. You know, I could be found guilty maybe of the
7 bank robbery, something like that. But do you think the
8 death penalty would be an appropriate type punishment for
9 somebody that played the role that I played in that crime?

10 A. (No answer)

11 Q. I'll tell you what the law says. In our
12 example we planned, we premeditated, just a bank robbery.

13 A. Okay.

14 Q. When we went to do the bank robbery, I had no
15 intent in my mind that anybody get hurt. That was not in my
16 mind. That was not my intent. But, nevertheless, the law
17 says if I should have anticipated that a life could have
18 been taken, then I could be found guilty of capital murder,
19 the same crime as Mr. Shook, and maybe receive the death
20 penalty, depending on how the jury answers these three
21 Special Issues that you read about.

22 A. Right.

23 Q. And a lot of people tell us, very frankly,
24 that's where they draw the line. The accomplice, when they
25 didn't have any intent for the murder, the death penalty is

1 just off the table. I recognize the law allows that, but I
2 just -- that's just not what I believe because that person
3 didn't have the intent.

4 A lot of people disagree with that law.
5 You know, you may want to give me a life sentence for the
6 role I played in that, but some people say because I didn't
7 have the intent, because I didn't actually cause the death,
8 the death penalty is just off the table for somebody like
9 me. What do you think about that?

10 A. I don't think that I could say that it's
11 totally, totally out of -- I mean, it's like not an option.
12 I don't think that I can honestly say that it's not an
13 option, as far as the death penalty for you.

14 Q. Would it maybe make it a clearer case for the
15 death penalty for me if I also went in with a loaded gun?

16 A. Yes.

17 Q. How come?

18 A. Because in my mind if you are walking around
19 with a gun, you're out walking through the field, a snake,
20 you see a snake, you are going to shoot it because you feel
21 it's doing something or coming against you, basically in, a
22 way, you know, you feel you are in some sort of harm whether
23 it be he's going to bite you or strangle, whatever kind of
24 snake it is, you feel you are in danger, so you are going to
25 take it out and shoot it, as far as that goes.

1 I know I've done the same thing. I
2 didn't go out. I just took it out as safety precautions.

3 Q. So if it's a situation where we plan, hey, do
4 whatever you need to do so we can get out of there, even if
5 you need to shoot and kill someone?

6 A. Exactly. That's what I say, yeah.

7 Q. Let me ask you this. I think you, like so
8 many people, have heard something about the case that you
9 are down here about today. I think you told us that in your
10 questionnaire that you have heard --

11 A. Right.

12 Q. -- read something about the publicity, that
13 type thing on this case. What do you remember hearing,
14 exactly, about this case?

15 A. The news, you know, basically. I was in the
16 den, saw it on the news. And all I remember as far as in my
17 mind, I believe it was like I saw a picture or TV up in
18 Oshman's and I believe a police car and heard an officer had
19 been killed by -- I can't even remember other than reading
20 through it now that there were people who broke out of
21 prison that had done it. That's really honestly and --
22 really, I never -- I had never really discussed it with
23 anybody. I have been associated with officers, but really
24 that's about it. It's just that one flash, that one moment.

25 Q. I know you told us you ride with the Iron

1 Pigs; is that correct?

2 A. Uh-huh.

3 Q. That is police officer bikers, right?

4 A. Police officers, firefighters, paramedics,
5 Border Patrol, every kind of law enforcement you can even
6 imagine all over the U.S.

7 Q. How long have you done that?

8 A. Let's see, I started riding with them last
9 October because that's actually when my boyfriend, who is an
10 ex-police officer, got his motorcycle. As far as knowing
11 all of those or a lot of those law enforcement guys, I've
12 known them for eight, eight -- ten years, you know, just met
13 more and more and more over the years.

14 Q. Okay. So you know a lot of people that are in
15 public service --

16 A. Exactly.

17 Q. -- or police officers?

18 A. Yes.

19 Q. And I know you just read the indictment in
20 this case, that last page where we allege --

21 A. Uh-huh.

22 Q. And you have heard it on the news --

23 A. Right.

24 Q. -- that a police officer was killed in this
25 case. Being that you are such close friends and associate

1 and socialize with police officers, how do you think that
2 might affect you in this case? I guess by that, I mean, we
3 talk to a lot of people and not every particular case is a
4 perfect case for each person.

5 A. Right.

6 Q. And you may be fine on a burglary case or just
7 another murder case where a police officer isn't the victim
8 and that type of thing. How do you think it might affect
9 you in this case?

10 A. I don't think that that would honestly -- I
11 don't think it would sway me one way or the other because of
12 his occupation. And the reason why is because I know these
13 people as people. Rarely do I ever see them in their
14 uniforms or doing their job. I see them in black leather
15 jackets acting like humans, you know, I guess, you could
16 say.

17 The thing that would bother me about that
18 is, as I guess everybody else, he was an officer doing his
19 job or -- he was doing what he was supposed to do or maybe
20 he wasn't doing anything. I can't remember the case. So I
21 can't tell you if he may have been an off-duty officer, I
22 don't know.

23 But I don't necessarily know that putting
24 the uniform on the man would sway me one way or the other
25 because he could have been -- you know, he could have been a

1 security guard or somebody driving through the parking lot
2 or whatever.

3 Q. Do you think maybe it would be a pressure on
4 you to consciously or subconsciously, once all your friends,
5 police officer friends, found out that you served as a juror
6 on this case maybe to lean towards the death penalty because
7 of a fellow officer was killed? We don't want to put you in
8 a hard spot.

9 A. Right, no, I understand that. They do stick
10 together as far as the guys go. Let's see. What -- you
11 want to know what I would feel --

12 Q. I'm just worried there might be some pressure
13 on you either during the trial or after the trial to maybe
14 lean a certain way because a police officer was killed.

15 A. No, I will do as far as what I, in my mind,
16 you know, that's me. I have to be responsible for me. I
17 cannot be responsible for their feelings.

18 Q. And the things that you have heard about the
19 case already, have they caused you to form some opinions one
20 way or the other about the case or the facts?

21 A. No. Because even after I left here on the day
22 that I filled this out up until I got my letter, I guess, I
23 really haven't thought about it, either. At one point I
24 thought, you know, what was the whole deal? Started to get
25 on the Internet and it kicked off. And I thought, yeah, I

1 guess that was it and I never tried again.

2 Q. Actually after you left here you got up on the
3 Internet?

4 A. Out of curiosity.

5 Q. Did you see results of other trials of the
6 other cases?

7 A. No. All I saw -- I went to the part where it
8 had like photos right here and maybe a date out to the side
9 and then I got kicked off, so I had -- I'm not a computer
10 person. So when I get kicked off, I get bored.

11 Q. So the photographs that you saw, were they of
12 the people that were charged?

13 A. I believe so, because it had -- it looked like
14 -- it looked like the photos were in color and then the very
15 last one was in black and white and that's really all I
16 remember.

17 Q. As we talked about, you know, not every case
18 is right for every juror and that's why we go through this
19 process.

20 A. Right.

21 Q. Especially a death penalty case, because a lot
22 of people are very uncomfortable with the issues that are
23 involved because so much is on the line for both sides,
24 obviously, when you are talking about the death penalty.
25 And even people that we talk to who are in favor of the

1 death penalty, like yourself, some of those people are in
2 favor of it in a philosophical or abstract way. What I mean
3 by that is even though they are in favor of the death
4 penalty, once they get down here and sit where you are
5 sitting right now, it becomes very real to them. And when
6 they look down and see a living, breathing human being on
7 the other end of the table, it becomes very real.

8 And, very frankly, that's our goal in
9 this case. We feel that we have the nature, type, and
10 quality of evidence that's going to cause a jury to find Mr.
11 Murphy guilty of capital murder and answer those questions
12 in such a way that one day he's going to be executed and lie
13 dead on a gurney in Huntsville, Texas.

14 And, you know, when it gets down to this
15 point in the process where it's so real to people, a lot of
16 people kind of say, you know, time out, this really isn't
17 for me. I'm in favor of the death penalty, I understand why
18 we have it, but I'm not comfortable participating in the
19 process that may, you know, ultimately end a man's life.

20 And, you know, some people tell us that
21 it might weigh on their mind or weigh on their conscience.
22 You know, oftentimes, as you may know, details of executions
23 are reported in the paper, reported in the media. You may
24 have seen that.

25 Are you aware of what our method of

1 execution is in Texas?

2 A. No, sir.

3 Q. It's lethal injection. And the procedures are
4 basically the same in every case. And they are often,
5 again, reported in the media. And I know that's a concern
6 to some people on down the line. You may read about it. If
7 the person is found guilty of capital murder and those three
8 questions are answered in such a way to require a death
9 sentence, the Judge has no discretion. He will sentence the
10 defendant to death.

11 He will be taken immediately down to
12 death row where he will stay until Judge Cunningham issues a
13 date of execution at some day in the future. I can't tell
14 you when that would be or how long it will be, but it will
15 be some date in the future. And on that day the person is
16 moved from death row to the prison in downtown Huntsville
17 where the death chamber is.

18 And on that day he is held outside by the
19 death chamber. They are allowed to meet with friends,
20 family members, spiritual advisors, that type of thing, have
21 a last meal. But when it gets close to 6:00, which is the
22 time that our law mandates all executions take place in
23 Texas, he is taken from that holding cell. He will either
24 go voluntarily or if he doesn't want to go, he will be
25 forced to go by the guards.

1 He will be taken into the actual death
2 chamber. You may have seen it on TV. It has a gurney.
3 It's a brick room. He would be taken there and strapped
4 down to that gurney with thick leather straps. He will be
5 given a chance to make a last statement at that point.

6 And there will be people who witness the
7 execution, friends of the victim's family, also his friends,
8 family, spiritual advisors, will be there as witnesses. He
9 will be strapped down with those leather straps. The warden
10 will give him a chance to make a last statement. He may ask
11 for forgiveness, he may proclaim his innocence to the very
12 end, he may express fear, he may express anger.

13 But at some point an IV will be started
14 in his arm and at some point the warden will nod to the
15 executioner and the executioner will press a series of
16 buttons where poisons are released through the IV and very
17 quickly after that the person's heart and lungs shut down.
18 They are still conscious briefly, but at some point they
19 lose consciousness and fall into a deep sleep and ultimately
20 die.

21 I don't run you through that to be
22 morbid, but those are the type of details that are often
23 reported and people say it weighs on their conscience. We
24 don't want to put anybody -- if you are not cut out for
25 this, we need to know. And you know yourself better than

1 anyone. So I want to be sure that you are the type person,
2 even though you are in favor of the death penalty, that can
3 participate in that process, that you can actually take pen
4 in hand and answer these questions, the tough issues, such
5 that it may ultimately result in Mr. Murphy lying dead on a
6 gurney in Huntsville, Texas, one day.

7 You know yourself better than anybody.

8 What do you think?

9 A. If this man has been found guilty by a jury
10 and I'm sitting on that and whatever my choice is, you know,
11 I don't -- I cannot honestly say that -- I do have a
12 conscience and in the way I look at it is, he had the
13 opportunity to be told step by step, this is what you get to
14 do, you get to do, before you lay down to rest. The person
15 that was killed did not have the opportunity at any point in
16 time to make his plans or her plans and get to tell the
17 loved ones goodbye, get to ask for forgiveness for whatever
18 sins, they did not have the opportunity, and basically the
19 gift to be able to say those things.

20 Q. Okay. So you do feel like you are the type
21 person that could participate in this?

22 A. I believe so.

23 Q. Let me talk to you a little bit about these
24 Special Issues. If you find somebody guilty of capital
25 murder, you move into the second phase of the trial, which

1 is the punishment phase, and that's where we ask the jury to
2 look at these three questions or Special Issues. You may
3 have looked at them briefly in the packet of materials. But
4 if you could, just take a minute and look up on the wall and
5 just kind of read through these Special Issues for me.

6 A. (Prospective juror complies.)

7 Q. Did you get a chance to look through those?

8 A. Uh-huh.

9 Q. Those are the questions, the three questions
10 we ask people. When it comes to the first two questions,
11 the burden of proof is on the State. We have to prove it to
12 you. It starts off with a no answer and we have to prove to
13 you that each of them should be answered yes.

14 You see how that first question kind of
15 asks a juror to make a prediction about future behavior,
16 whether the person will be a future danger, that type of
17 thing? You know, we ask a juror is there a probability the
18 person would commit criminal acts of violence such that they
19 would be a continuing threat to society. Does that make
20 sense to you?

21 A. Uh-huh.

22 Q. You can see how that's kind of asking the
23 jurors to make a prediction and that type of thing about
24 future events?

25 A. Okay. Yes, sir.

1 Q. Okay. You think that you would be comfortable
2 doing that?

3 A. Judging someone else's character by his past?

4 Q. Uh-huh. Making a prediction about future
5 behavior, the probability of future behavior?

6 A. Right. Would I be comfortable with that?

7 Q. Do you think that you could do it?

8 A. Yes, I have to do it every day.

9 Q. Okay. What would be important to you in
10 answering a question like that?

11 A. What would be important to me?

12 Q. What types of things would you like to know?

13 A. Details of his past. Um, pretty much, I
14 guess, details of his past, where -- and maybe what his
15 ideas are of the future.

16 Q. Okay. Would you look back at the crime that
17 he had been convicted of for guidance in answering that
18 question?

19 A. I'm sorry, could you say it again?

20 Q. Would you look back at the crime that he had
21 been convicted of, the crime that he was on trial for?

22 A. Okay.

23 Q. A lot of people tell us they would look back
24 at the crime.

25 A. Look --

1 Q. What I'm getting at is this. Some people tell
2 us, you know, hey, if I found somebody guilty of capital
3 murder, I'm always going to think they are a future danger,
4 that type thing. If I found them guilty of capital murder,
5 if I'm convinced beyond a reasonable doubt that they're
6 guilty of that crime, I'm always going to think there's a
7 probability that they would be that future danger.

8 A. Well, there's always a probability of anyone
9 doing something in the future. But this person, is he going
10 to repeat the same crime as he did before?

11 Q. That's not -- we don't ask is he going to kill
12 again.

13 A. Right.

14 Q. We just ask if he's going to be a danger. And
15 a lot of people tell us, the fact that they found him guilty
16 kind of answers that first question. If they are the type
17 person to be convicted of capital murder, then I'm always
18 going to think they're a future danger. It's just kind of a
19 common sense proposition.

20 A. I was going to say, I expect so.

21 Q. To be very frank, what the law requires is you
22 cannot automatically answer any of these questions just
23 based on your guilty verdict. But a lot of people, I guess
24 such as yourself, say it's such a common sense proposition.
25 Beyond a reasonable doubt I think he's a capital murderer,

1 I'm always going to think he's a future danger. There's
2 that probability there.

3 A. Yeah, I guess I can understand that because
4 once, I guess, your house is broken into, you are always
5 going to think there's a possibility of someone breaking
6 into it again.

7 Q. So it sounds like -- I told you what the law
8 is, but it sounds like you are one of those people that if
9 you find somebody guilty of capital murder, that answers
10 that first question for you yes every time; is that right?

11 A. Yes.

12 Q. Again, the law requires that you have that
13 open mind. But a lot of people, such as yourself, just
14 can't do it because it's a too common sense proposition?

15 A. Right.

16 Q. The second question kind of deals with those
17 issues we talked about before, you know, the accomplice
18 issue.

19 A. Okay.

20 Q. That type thing. I'll be very frank with you,
21 we're prosecuting this case, prosecuting Mr. Murphy, under
22 the accomplice theory that he's a nontriggerman.

23 A. Okay.

24 Q. This question kind of deals with that. If you
25 will recall what we talked about a few minutes ago, in order

1 to convict someone of capital murder -- maybe we didn't talk
2 about this. But in order to convict someone of capital
3 murder, an accomplice, you have to find that they should
4 have anticipated that a life would be taken.

5 A. Okay.

6 Q. When we get down to this stage, the question,
7 that last sentence, asks you, if the person actually
8 anticipated that a life would be taken. The reason I want
9 to visit with you about this is that I know premeditation is
10 very important to you. You told us.

11 A. Uh-huh.

12 Q. Is it a situation where you don't think the
13 death penalty is ever appropriate unless it's a
14 premeditated-type crime?

15 A. Can you ask the question, just the last bit?

16 Q. Uh-huh, sure. You know, the law allows us to
17 prosecute somebody and the potential of a death penalty in a
18 case where someone didn't have any intent, necessarily, that
19 someone die.

20 A. Okay.

21 Q. The law just looks at whether the person
22 anticipated someone would die. I know premeditation is very
23 important to you when you look on that case by case basis.
24 And I'm just curious if you can ever assess the death
25 sentence unless the crime is premeditated. If the person

1 didn't have the intent, they maybe should have anticipated
2 or they may have anticipated, but they didn't have the
3 intent, the premeditation. And I'm just wondering, absent
4 that premeditation or intent, would you take the death
5 penalty off the table?

6 A. No.

7 Q. Okay. Does that question make sense to you,
8 though, that you can look at a set of facts, you know, going
9 back to my example, I'm the bag man.

10 A. Right.

11 Q. Look at these facts and say, you know, ask
12 yourself, should I have anticipated or did I actually
13 anticipate that a life would be taken? Does that make sense
14 to you?

15 A. Yes.

16 Q. Okay. So under our example, even though it
17 wasn't premeditated or I didn't intend it, you could still
18 keep an open mind for the death penalty for me?

19 A. Yes.

20 Q. Okay. And, again, that question starts off
21 with a no. It's up to us to prove it to you beyond a
22 reasonable doubt.

23 Let me let you look at Special Issue No.
24 3. That's kind of the last stop in the process. We call
25 that the mitigation question. We ask jurors -- this is the

1 final thing you do before someone is sentenced to death. If
2 questions 1 and 2 are answered yes and yes, then you move on
3 to this question.

4 We ask you to look back at the crime,
5 look at what you know about the person on trial, look at
6 what sort of personal, moral blame he bears, or culpability,
7 as the question says, and ask yourself if there's anything
8 mitigating, anything that lessens his blame. And if there
9 is, is it sufficient that his life ought to be spared?

10 And, again, this is the last step in the
11 process. And the law requires that, you know, even at this
12 late step in the process, that you are still able to kind of
13 keep an open mind, that you haven't prejudged. See what I'm
14 saying?

15 A. Uh-huh, yes.

16 Q. A lot of people tell us, you know, if I've
17 convicted someone of capital murder, if I have found there's
18 a probability that they are a future danger, if I found at
19 the very least that they anticipated a life would be taken,
20 by the time we get that far in the process to question No.
21 3, it's kind of over. There's really nothing at that point
22 that can sway me. You know, my mind -- there's just nothing
23 there that could convince me that he deserves a life
24 sentence rather than the death penalty.

25 What do you think about that? Does that

1 question have any meaning for you when you get that far in
2 the process or is it because you found him guilty of capital
3 murder, you think he's a future danger, you think he
4 anticipated? A lot of people tell us, very frankly, there's
5 just no meaning in that question when you are that far in
6 the process. I have made too many other decisions before
7 this one. This decision is already made and there is just
8 never going to be anything mitigating or sufficiently
9 mitigating that I'm going to spare his life. What do you
10 think about that?

11 A. I have to agree with, I guess, what you say
12 everybody else says. Once I find yes on this and once I
13 found yes on that --

14 Q. Again, it's kind of like a common sense
15 proposition when you get that far in the process. But what
16 the law requires is --

17 A. I still have to keep an open mind, if
18 something else in my own -- if somebody else said one little
19 word, it -- I don't know, because I've never been in this
20 situation, but I would think that one little word might
21 stimulate me to go, you know what? But, then, I don't know.
22 I really honestly don't know, because I have not been in
23 that situation, so I cannot answer that question yes or no,
24 as far as that goes.

25 Q. So you don't know whether you could keep an

1 open mind?

2 A. No, I can keep an open mind. I don't know
3 what my response would be as far as, I said yes, they have
4 shown me this and, yes, I do believe that this is exactly
5 which way he needs to go. I can't think of any
6 circumstances or anything, but I have to keep an open mind.

7 Q. That's the most common response we get.
8 Because we ask people, is there anything that pops in your
9 head that you might consider mitigating in these types of
10 cases and most people can't think of anything. So it's not
11 uncommon.

12 A. So I'm average?

13 Q. Pretty much. Do you have any questions about
14 this whole process, the issues we've talked about or
15 anything that may go on?

16 A. Not that I can think of.

17 Q. Give me just a second and let me talk to
18 Mr. Shook. Any police officers that you know, do they or
19 did they work for the Irving Police Department, do you know?

20 A. To my knowledge -- to my knowledge, no, sir.
21 I don't know where -- like I said, all over the U.S. I have
22 only like a certain -- Dallas -- I didn't know exactly where
23 they work. And I can say Border Patrol, obviously, works
24 some place else outside of Irving. But to my knowledge, I
25 do not know where they work out of, what stations.

1 Q. You told us that your boyfriend was a police
2 officer for eight years; is that right?

3 A. Yes, sir.

4 Q. Where did he work?

5 A. He worked for the Dallas Police Department
6 down in North Dallas on McCallum and Meandering.

7 Q. And what does he do now?

8 A. He's a computer geek.

9 Q. All right. Thank you for your time, Ms.
10 Crawford.

11 MR. WIRSKYE: That's all I have, Judge.

12 MS. BUSBEE: May it please the Court.

13 CROSS-EXAMINATION

14 BY MS. BUSBEE:

15 Q. Now I get to tell you this, because it's kind
16 of a nice thing. You are not average at all. You are
17 probably the 32nd, 34th something person we've talked to in
18 this process, but you know what juror number you were? No.
19 1144. So there are a lot of people we tossed over our
20 shoulders because they just, you know, they just didn't make
21 the cut as far as being reasonable or rational or we're not
22 -- this takes a long time, but we're not trying to waste
23 time. So you are not average by any means.

24 So we're talking to people who are
25 thoughtful and as middle of the road as we can get them to

1 be. So don't feel average. Obviously, you don't seem like
2 anybody who is necessarily governed by what other people
3 think, so I'm not going to have to go over as much as
4 Mr. Wirskye has, because he's told you a lot of things that
5 I don't have to cover again.

6 But I do want to talk to you about this
7 scheme that we have in Texas. This is, I suppose, doing
8 these questionnaires is a good thing because we get people's
9 kneejerk reaction, but we ask you all these things about
10 capital punishment without telling you how it's assessed.

11 And a lot of times when people have said
12 things about how they feel about capital punishment, but
13 they see what the Legislature has come up with, they say,
14 you know, that is a good scheme and I can follow that as a
15 juror. And you wouldn't have known otherwise, right, how we
16 do it. So -- and I really appreciate your candor about how
17 you feel about things.

18 But there's two different ways to think
19 about this or discuss how you feel about something we need
20 to know, if you feel comfortable telling us. But the real
21 issue is if you understand the law, which I know now that
22 you do. And if you understand the law, can you follow it?
23 I think the Judge started out, he usually does start out
24 with jurors saying that's actually the bottom line as to
25 whether you are qualified as a juror or not. So there was

1 some question to you about this Special Issue No. 1.

2 Now, just to recap, because we -- there
3 was a lot of stuff early in the morning. But to recap, when
4 we get to Special Issues here in this case, we've -- we -- a
5 jury has already found the person guilty of the offense of
6 capital murder under whatever circumstance.

7 And then under those circumstances,
8 really, the law is kind of contra death penalty. In other
9 words, once you have found someone guilty of the offense of
10 capital murder, the law requires an automatic life sentence
11 before another word is spoken or another piece of evidence
12 is put on, automatic life sentence.

13 If this is the case where the State
14 elects to, attempts to get a death penalty or a death
15 sentence in the case, then and only then, does a jury
16 address these Special Issues. And so these Special Issues
17 have to be proved to a juror beyond a reasonable doubt, just
18 like -- well, let me take that back. Nos. 1 and 2, the fact
19 questions, have to be proved beyond a reasonable doubt.
20 And yes, I think most people base decisions that they make
21 day-to-day on what's happened in the past. So obviously all
22 jurors are going to have that experience.

23 A. Uh-huh.

24 Q. If they are the sort of person who doesn't,
25 they probably wouldn't be talking to us, anyway. My

1 question is, can you make the State prove it to you beyond a
2 reasonable doubt that there's a probability? Set aside any
3 thought that you have on that and say, well, the law says I
4 must find beyond a reasonable doubt based on evidence that
5 there's a probability that the defendant would be a
6 continuing threat to society, not something that you would
7 automatically decide, but you would follow the law?

8 A. Right. That -- yes, I do agree. You are
9 going to have to give me information so that in my database
10 I can break it down and make my own decision, not
11 necessarily what someone tells me to decide. I may look
12 that way, but I can think by myself.

13 Q. Definitely. All right, I thought you would
14 say that. And Special Issue No. 2, just to kind of explain
15 that to you, this is a Special Issue that we only have when
16 the State has sought a conviction under the theory of
17 parties. So there's another question, that party, accessory
18 to a crime, as we were talking about earlier. So this would
19 be another thing that you would have to decide beyond a
20 reasonable doubt.

21 And I think that you told us that you
22 could listen to the evidence and make a determination as to
23 whether or not the person intended to kill someone or
24 anticipated that a life would be taken. Is that a fair
25 statement? You could do that?

1 A. Say it again?

2 Q. Special Issue No. 2, can you make the State
3 prove that to you beyond a reasonable doubt before you found

4 --

5 A. To my knowledge, yes.

6 Q. Okay. I thought so. Now, someone used this
7 example the other day. I think it's a pretty good one. I
8 used to say hurdles. The State has to jump over Special
9 Issue No. 1 and then they have to accomplish Special Issue
10 No. 2.

11 But Mr. Shook used the example the other
12 day of a window, because this is a process. You do the
13 first question and then you do the second question and you
14 get to the third question. It's kind of subjective. And
15 the only thing that we would like to know at this table is
16 we can't commit you to a set of facts, but if you had
17 decided a future danger and if the person anticipated that a
18 life might be taken, is your mind completely closed or would
19 there still be an opportunity to -- or would you still
20 consider something that you heard in the case, either what
21 happened in the case or what you learned in the trial about
22 the circumstances concerning the defendant or maybe some
23 other fact?

24 A. See, that's what I was saying about the third
25 one. I can say yes, I can say yes, and at this point, you

1 know, there could be -- like I said, I cannot tell you what
2 I'm going to be thinking tomorrow. Something may come up.
3 There may be a word and it may stimulate another thought. I
4 cannot tell you that -- I mean, it would be up to me,
5 obviously, to pay attention to everything from point A to
6 point B to get me to point C to be able to make that
7 decision.

8 Q. I appreciate that. Is there something that we
9 haven't asked you that you are concerned about or something
10 you wanted to tell us or just any thoughts about serving on
11 this jury that we haven't exhaustively asked you about at
12 this point?

13 A. Because I don't wear your shoes, I have no
14 idea what I'm supposed to be thinking about or questioning.

15 Q. Most people say that. It's just sometimes
16 someone might come up with, well, I've already decided this
17 case. Not you, but I always give someone the opportunity,
18 because it's kind of -- even though you are not, you feel
19 like you are being on trial here. So I thought I would give
20 you a chance to say something to us that you thought we
21 might think is important about your service.

22 A. I haven't made up my mind because I have no
23 idea what I'm supposed to make my mind up about as far as
24 that goes, I mean, other than you have to tell me and then I
25 have to decide. I don't have any background knowledge,

1 other than an Oshman's maybe from the TV.

2 Q. Okay. Thank you.

3 MS. BUSBEE: We'll pass the juror.

4 THE COURT: Ms. Crawford, let me try to
5 sum this up. I have gotten two different answers from you
6 on Special Issue No. 1, so I need to be real clear.

7 PROSPECTIVE JUROR: That's fine. Because
8 I'm probably confused myself and don't know it.

9 THE COURT: My job is to tell you what
10 the law is. The law requires that the State prove Special
11 Issue No. 1 and Special Issue No. 2 to the jury beyond a
12 reasonable doubt.

13 PROSPECTIVE JUROR: Okay.

14 THE COURT: As you have understood the
15 process, if the jury has found someone guilty of capital
16 murder, the law then requires an automatic life sentence.

17 PROSPECTIVE JUROR: Okay.

18 THE COURT: The State is going through
19 this process and the jury will be asked in this case to look
20 at these issues. If these issues are answered in a certain
21 way, then a death sentence would result.

22 PROSPECTIVE JUROR: Uh-huh.

23 THE COURT: If a person goes in and says,
24 well, if I have found him guilty of capital murder, then
25 Special Issue No. 1 has already been answered for me.

1 PROSPECTIVE JUROR: Okay.

2 THE COURT: The law says that you have to
3 wait and require the State to prove that to you. You may
4 look at all the evidence in the case that you heard or there
5 may be additional evidence from the State, who knows? But
6 if you say, well, I'm going to wait and make the State prove
7 that to me in the second phase of the trial, it's actually
8 two trials here.

9 PROSPECTIVE JUROR: Okay.

10 THE COURT: You have the first phase.
11 The jury goes out and decides is he guilty or not guilty.
12 If he's guilty, then you can come back in for the second
13 phase of the trial and they may present more evidence and
14 they may not. But you go back and deliberate on a second
15 period to determine whether or not these issues have been
16 answered.

17 PROSPECTIVE JUROR: Okay.

18 THE COURT: Are we together on the
19 procedures here?

20 PROSPECTIVE JUROR: Okay.

21 THE COURT: So looking at Special Issue
22 No. 1, are you going to require the State to prove that to
23 you beyond a reasonable doubt or is it already answered if
24 you just found him guilty?

25 PROSPECTIVE JUROR: Like I said, you have

1 to prove something to me. But I'm human. You can prove it
2 to me and the next part you can prove something else to me,
3 well, the big picture is this No. 1 and 2 together. I
4 cannot honestly say that when the big picture is proven,
5 something was not -- either my brain didn't pick it up or it
6 was not presented to me, that might cause my brain to be
7 stimulated. You know, I might think of something else. You
8 see, I don't know. I can't communicate, I guess, what I'm
9 thinking. I mean, 1 yes, 2 yes, and then --

10 THE COURT: What we're doing now is you
11 have to have an open mind --

12 PROSPECTIVE JUROR: Okay.

13 THE COURT: -- in answering Special Issue
14 No. 1 yes or no.

15 PROSPECTIVE JUROR: Right.

16 THE COURT: See, those questions you have
17 to be --

18 PROSPECTIVE JUROR: So if 1 is yes and 2
19 is yes --

20 THE COURT: Listen. You have to have an
21 open mind, that you would go back to deliberate and you
22 could answer Special Issue No. 1 yes or no.

23 PROSPECTIVE JUROR: Okay. I have the
24 option to answer it yes or no.

25 THE COURT: That's the option. The

1 question is could you answer it yes or no or, simply because
2 a jury has found him guilty of capital murder, would that
3 automatically answer No. 1 yes? You see the difference
4 there?

5 PROSPECTIVE JUROR: If somebody else says
6 yes --

7 THE COURT: No. Question, whether
8 there's a probability that the defendant would commit
9 criminal acts of violence that would constitute a continuing
10 threat to society. Do you have an open mind that you could
11 answer that question yes or no, even after you found him
12 guilty of capital murder, depending on whatever evidence is
13 offered --

14 PROSPECTIVE JUROR: Uh-huh.

15 THE COURT: -- if any evidence, is your
16 mind open to both a yes and no answer?

17 PROSPECTIVE JUROR: I would think so.
18 But -- yes.

19 THE COURT: Look at the question. Is it
20 -- is your mind open that you could answer that yes or no,
21 depending on what the evidence required you to do?

22 PROSPECTIVE JUROR: Is my mind? Yes.

23 THE COURT: Your mind is open?

24 PROSPECTIVE JUROR: My mind is open.

25 THE COURT: Thank you so much. If you

1 wait for us outside, we'll have you back in a few minutes.

2 [Prospective juror out]

3 THE COURT: What says the State?

4 MR. WIRSKYE: State would submit the
5 juror on issue No. 1, Your Honor. I believe she told me
6 when I questioned her, however difficult the questioning
7 was, that she would automatically answer Special Issue No. 1
8 yes, if she found the defendant guilty of capital murder.

9 I don't believe the question was ever
10 phrased to her in that way with the defense. The defense
11 merely asked her if she would hold the State to the burden
12 of proving No. 1. It's the State's contention she's
13 disqualified because she would have found that burden has
14 been met simply because he was convicted of capital murder.

15 Much to the Court's credit, when the
16 Court delved into the matter with her and attempted to ask
17 the question, I don't believe the Court ever asked the
18 question or I don't believe the juror ever understood the
19 Court to ask the question, could you keep an open mind to
20 Special Issue No. 1, even if you found him guilty of capital
21 murder. I don't believe that was ever clear.

22 We submit her as the classic vacillating
23 juror.

24 MS. BUSBEE: Your Honor, when Mr. Wirskye
25 questioned this juror, he used and she used the word

1 "possibility" interchangeably in that exchange and,
2 therefore, I don't think that she is disqualified, that
3 possibility is not the law. I did ask her the question in
4 proper form. I did point out to her that she would have
5 already found him guilty and she did say that she could make
6 the State prove that to her beyond a reasonable doubt before
7 she found that. And I submit that she's imminently
8 qualified.

9 THE COURT: The Court, after giving the
10 potential juror an opportunity to understand the law and not
11 confuse her, even after she was already confused, she
12 understands her obligations, if she were to sit on this
13 jury, I find Ms. Crawford to be qualified.

14 MR. SHOOK: We submit her for being
15 totally confused. I think it's obvious she didn't have the
16 slightest idea what these questions are, nor did she
17 understand any of the Court's instructions. I don't think
18 she has any idea what this process is or what these Special
19 Issues are. I don't think after your simple explanation she
20 has the slightest idea what you were talking about and we
21 submit her for that.

22 THE COURT: I find she's quite
23 deliberative, intelligent, and capable of understanding
24 simple questions without -- she's just not a kneejerk
25 reaction. But I find she's -- certainly other people have

1 been a lot more confused after the parties have had an
2 opportunity to talk to them. So I still find she's
3 qualified.

4 MR. SHOOK: I might agree with you about
5 being deliberate, but I sure wouldn't on being intelligent.
6 We will exercise a strike.

7 THE COURT: Have Ms. Crawford come back
8 in, please.

9 [Prospective juror in]

10 THE COURT: Ms. Crawford, come on back
11 up. I don't want to yell at you. Thank you for your time
12 and service today. You probably have no idea of the pickle
13 they would put you in this morning, did you?

14 PROSPECTIVE JUROR: No, sir.

15 THE COURT: We want to thank you for your
16 service, but you are not going to sit on this jury. You now
17 have some experience you can go back and tell your buddies,
18 the Iron Hogs?

19 PROSPECTIVE JUROR: Iron Pigs.

20 THE COURT: So we appreciate your
21 service, but we're not going to seat you on this jury.
22 Thank you very much.

23 (Recess)

24 THE COURT: Mr. Jones.

25 [Prospective juror in]

1 THE COURT: Good morning, sir, how are
2 you?

3 PROSPECTIVE JUROR: Good morning. Fine.

4 THE COURT: Don C. Jones?

5 PROSPECTIVE JUROR: Yes.

6 THE COURT: Welcome to the 283rd. We're
7 -- actually, you were scheduled to be the third one today,
8 but I was informed that you need to be in Austin, so we're
9 going to get you in a little early.

10 PROSPECTIVE JUROR: Okay. Appreciate it.

11 THE COURT: Have you had an opportunity
12 to read a couple of times through the guide that I provided
13 for you?

14 PROSPECTIVE JUROR: Yes.

15 THE COURT: It's a lot of law to hand
16 someone first thing in the morning, here read this, and
17 understand it. The lawyers are going to spend some time
18 going over the law with you and give you examples on how it
19 works, asking your opinions about what you think the law is
20 and review the questionnaire. You haven't looked at it
21 since May, but it's there in front of you in case they ask
22 some specific questions like what were you thinking and you
23 can refer back to the question and your answer.

24 PROSPECTIVE JUROR: Okay.

25 THE COURT: At the end of the process,

1 the two questions that I need to be able to answer are,
2 number one, do you understand the law? Number two, can you
3 follow the law? That's my job here. Only question I have
4 for you at this time is will you be able to serve this Court
5 for the two weeks beginning on November 10th?

6 PROSPECTIVE JUROR: Yes.

7 THE COURT: With that, the State may
8 inquire. Mr. Shook?

9 MR. SHOOK: Yes, Judge.

10 DON JONES,
11 having been duly sworn, was examined and testified as
12 follows:

13 DIRECT EXAMINATION

14 BY MR. SHOOK:

15 Q. Mr. Jones, my name is Toby Shook. I'm the
16 prosecutor that will speak to you on behalf of the State
17 this morning. As the Judge said, we're only interested in
18 your honest opinions. You have been down on a jury before.
19 I believe you put in the questionnaire it was a civil case
20 --

21 A. Yes.

22 Q. -- involving custody?

23 A. Uh-huh.

24 Q. The jury selection was probably a little
25 different. They probably chose the jurors from just one

1 panel, which is normally how it's done. Because this is a
2 death penalty case, the law prescribes for us to talk to
3 each juror one on one.

4 I'll talk a little bit about your
5 questionnaire, mostly about the law, the rules that apply to
6 each case, just kind of common sense rules. I don't think
7 you would have any problem with them. And a lot of them I'm
8 sure you have heard before growing up and being on jury
9 service and going through that sort of thing.

10 Obviously, you know from what the Judge
11 has told you, this is a capital murder case in which the
12 State is seeking the death penalty. So we want to talk to
13 each juror about how they feel about the death penalty.

14 On the questionnaire you put that you are
15 in favor of it as a law and I would just like you to follow
16 up and tell us why you favor it, the purpose you feel it
17 serves society.

18 A. Well, I've always kind of believed in the
19 eye-for-an-eye situation. And, I mean, it's kind of if the
20 person does the crime, they need to do the time, same thing.

21 Q. You put on the questionnaire that you circle
22 the, I believe the death penalty is appropriate in some
23 murder cases. And that's if we were going to take a survey,
24 I guess, of responses we get, that's the majority. Some
25 people want it in every case, no matter what the facts.

1 Other people are against it for religious purposes, but
2 people that are for it and think about it, normally say for
3 some murder cases, meaning in my mind it just depends on the
4 facts of the case.

5 A. Right.

6 Q. You are going to have to wait and listen to it
7 and then decide if you think it's the appropriate punishment
8 or not. Is that how you feel?

9 A. Yes, that's what I was thinking.

10 Q. In Texas a capital murder is reserved only for
11 certain offenses. First of all, it has to be a murder case,
12 an intentional killing, not a justified homicide, not
13 something in self-defense or accident. The person wants to
14 intentionally murder another human being and acts upon that
15 intent. It may only take a few seconds to form the intent,
16 but he has to have the intent there.

17 In addition to that, we have to have some
18 other aggravating factors. We have a lot of murder cases, a
19 lot of brutal murder cases, which is, most folks that are
20 for the death penalty probably would want to be considered
21 for the death penalty, but it's not. I could pull out a gun
22 now and execute Mr. Wirskye because I didn't like the tie
23 he's wearing. I could laugh about it. Pretty callous act.
24 But I couldn't get the death penalty for it.

25 Because what the State has done is

1 reserve the death penalty for murder cases under some
2 aggravating factors. That's because of guidelines set down
3 by the Supreme Court years ago. Murder during a felony.
4 Someone kills someone during a robbery, where you went to a
5 convenience store, murdered the clerk, that could be a death
6 penalty case, depending on the facts. Or murder, burglary,
7 breaking into someone's home, during an arson, rape,
8 kidnapping, committing it during another felony, that could
9 be a death penalty case. Again, it would just depend on the
10 facts.

11 Murder of a police officer or fireman on
12 duty, murder of a child under the age of six, murder of more
13 than one victim in the same transaction or series of
14 transactions. And then murder for hire, someone does it for
15 money or profit. But those are the only specific types of
16 situations where the death penalty is reserved for, for
17 consideration.

18 Those cases, generally, are those the
19 types of cases that you feel should at least come into
20 consideration for the death penalty?

21 A. Yes. Until I read this, I didn't really
22 realize what the term "capital murder" meant.

23 Q. Okay.

24 A. You know, I did today after seeing this.

25 Q. It seems to me that your own thoughts, and we

1 just try to get your gut reaction on this, you put, you
2 know, in the questionnaire that if a person kills another
3 while committing a crime, that is something that should be
4 considered. And that's kind of what the law is. That's
5 some of those aggravating factors.

6 Again, the way the system is set up, not
7 every case, even if you found him guilty, is going to be a
8 death penalty. Again, it's going to depend on the facts.
9 The trial is divided into two portions. There's the
10 guilt/innocence stage where we have to prove he's guilty.
11 If we are unable to do that and you have a reasonable doubt,
12 you are going to let him go. It's a not guilty. That's
13 pretty simple.

14 If we do prove it, though, that doesn't
15 end the trial. You then move into a second trial, so to
16 speak. It's really a second part of the trial where you can
17 get more information and then you get these questions, these
18 Special Issues. And we'll go over those in a minute.

19 And whether it's a death sentence or life
20 sentence, depends on how you answer those. When we talk
21 about capital murder, the first example we usually think of
22 is the triggerman. You know, I rob a 7-Eleven. And you
23 think I committed a capital murder. You think of the
24 situation of a person going in and pulling the trigger and
25 murdering.

1 But capital murder is like any other
2 crime in Texas. Sometimes you have more than one individual
3 that helps carry that crime out and sometimes they act as a
4 team. Sometimes they act as a group. The laws says that if
5 you are actively participating in a crime, you could be held
6 responsible for it and be punished, even if you are not the
7 -- you don't participate as much as others. It might be
8 someone that does a little more, but if you are actively
9 participating, you are held responsible. It's true for
10 capital murder.

11 If Mr. Wirskye and I decide to go into a
12 bank and rob it and we're going to act as a team. I have
13 the gun. He's going to be the bagman and he gathers the
14 money up. And I shoot a clerk down in the middle of it, or
15 a teller, and we escape.

16 I, obviously, can be prosecuted for the
17 death penalty, but so can he, depending on the facts, if he
18 knew I had a gun and he agreed to help me commit this
19 offense. Maybe I couldn't have pulled it off without him.
20 That's what we call a party, the law of parties.

21 And the law says that in a capital murder
22 situation, even a nontriggerperson can be prosecuted for the
23 death penalty, if the jury believes they have actively
24 participated. And ultimately, depending on the facts and
25 how they answer those questions, they can get the death

1 penalty.

2 Some people disagree with that.

3 Sometimes they say, you know, if it was up to me, the death
4 penalty would just be up for the triggerman, not the
5 accomplices. Other people agree with the law and say, well,
6 it would depend on the facts. But if you are helping carry
7 out these crimes, then you have to be held responsible, too.

8 How do you feel about an accomplice or
9 nontriggerman being prosecuted and ultimately receiving the
10 death penalty? Do you feel that could be appropriate under
11 the given facts?

12 A. I think he would be -- should get about the
13 same punishment as the person that pulled the gun and did
14 the shooting.

15 Q. Okay. And that would --

16 A. If they were together in this thing, you know.

17 Q. So you agree with the law that if he is
18 actively participating, that he should be held responsible,
19 also?

20 A. Yes.

21 Q. Okay. Now, here's how the case is set out. I
22 can't get into the facts of this case, obviously, but there
23 was some publicity about it. I think you said you had seen
24 some?

25 A. Uh-huh.

1 Q. It was on the TV and the newspapers. You
2 don't remember anything about this particular defendant, but
3 you do remember the general coverage, I take it?

4 A. Yes, sir.

5 Q. The law says this, if you have seen the crime
6 covered on TV, that doesn't mean you were ineligible or
7 unfit to be a juror. We wouldn't get a jury then, if that
8 were the law. What the law says is that if you are going to
9 sit on a jury, you can make your decisions only on what you
10 hear in the courtroom from the witness stand and from the
11 evidence submitted to you.

12 In other words, you can't say, well, I
13 know I heard all these witnesses say this, but I remember
14 three years ago on TV I saw this about this story, so I'm
15 going to go this other way. You probably recognize, you
16 have been around the block once or twice, that the
17 newspapers don't always get it right?

18 A. Right.

19 Q. And that's what the law contemplates that the
20 more accurate information, obviously, is going to come from
21 the witness stand. Could you follow that rule of law? And
22 we know you can't forget what you have read, but at least
23 promise the Court you won't let that influence you and make
24 your decisions on this case, if you were seated as a juror,
25 just based on what you hear from the witness stand and that

1 sort of thing?

2 A. Right, yeah. And, you know, through the time,
3 my memory has gotten -- I've forgot a lot of what went on at
4 that time, too.

5 Q. Okay. Simple rule of law. You feel you could
6 follow that rule of law? If you were seated on the jury,
7 you would make your decision, then, just based on what the
8 witnesses told you and not anything that you have read in
9 the newspaper or seen on the TV a year or two ago?

10 A. Correct.

11 Q. Now, the trial, as I said before, is divided
12 into two parts. We first have the burden of proof to prove
13 to you beyond a reasonable doubt that the defendant is
14 guilty. If we're able to do that, the trial doesn't end.
15 You go to the punishment phase and you can hear additional
16 information. You can hear about a person's background, you
17 can hear bad things, if they have committed other crimes, or
18 you can hear good things. Maybe they have never committed
19 a crime. Good and bad, kind of like the TV show, "This is
20 Your Life," they had where people come from your past.

21 And at the close of that, the jury gets
22 these Special Issues, which are unique to a death penalty
23 case. These issues -- you don't write in death or life at
24 the end of the punishment phase. What you do is answer the
25 questions. You have to go back and reweigh all the evidence

1 you heard in the guilt/innocence stage and then any new
2 information you got and then make your decision.

3 The first question has to do with whether
4 the defendant is a future danger to society, if you look at
5 that evidence. And then the second question, did the State
6 prove to you that he anticipated that a life would be taken?
7 And the last one is the mitigation question where you view
8 everything and decide is there sufficient mitigating
9 evidence where I think a life sentence should be imposed
10 rather than a death sentence.

11 But if you answer them yes, yes, and no,
12 it's a death sentence. If they are answered any other way,
13 it's a life sentence. Is that clear to you?

14 A. Yes.

15 Q. Let's talk a little bit about this first
16 Special Issue. It asks whether there's a probability that
17 the defendant would commit criminal acts of violence that
18 would constitute a continuing threat to society?

19 You see where that question is asking you
20 to make a prediction about the future, how he's going to
21 behave, whether he's going to be a danger? Do you feel you
22 could answer that question yes, if you are given enough
23 information?

24 A. I believe so.

25 Q. What types of things would you want to hear

1 from -- as a juror, what things would be -- what type of
2 information would you be looking for?

3 A. Well, in that case they're talking about the
4 probability that the defendant would commit criminal acts.
5 I guess you would need to know his background.

6 Q. Okay.

7 A. To see kind of what kind of history is there.

8 Q. See if there's a pattern or something like
9 that?

10 A. Right, uh-huh.

11 Q. You can hear that information at this point in
12 time. You can even hear from the witnesses, if they are
13 available. You can hear what he got in punishment. You can
14 even hear from crimes that he wasn't caught on, but we can
15 prove. You can hear the opposite, too. If he was a Boy
16 Scout or choir boy, that sort of thing. But you are exactly
17 right. That's the information that you can get in this
18 portion of the trial to help you see if there's a pattern,
19 that sort of thing. And, quite obviously, you get the facts
20 of the crime itself and his role in the crime to see if that
21 could aid you in answering that question, too.

22 A. Uh-huh.

23 Q. The State -- what happens is, you know from
24 growing up here in this country, that every defendant starts
25 out with that presumption of innocence and we have to prove

1 him guilty. The same holds true in the punishment phase in
2 that this question starts out with a no answer and we have
3 to prove to you beyond a reasonable doubt it should be
4 answered yes. We do that by putting on new evidence, if we
5 have it, in the punishment phase and then arguing or
6 resubmitting the evidence in the guilt/innocence stage. But
7 we have that burden of proof. We have to prove that to you
8 beyond a reasonable doubt.

9 Probability, these words will be -- the
10 definitions are up to you. We're given some guidelines on
11 probability. We don't have to prove it's a certainty,
12 because I don't think that we could ever do that. But,
13 obviously, probability is more than just a possibility.
14 If they meant just possibility, anything could be possible.
15 More people tell us more likely than not or greater than 50
16 percent. Are you comfortable with that type of definition?

17 A. With what percent?

18 Q. Greater than 50 percent.

19 A. Oh, yes.

20 Q. More likely than not, that sort of thing?

21 A. Yes.

22 Q. Again, what we do is put on evidence, as you
23 said, to see if there's a pattern or what the background is.
24 The law contemplates that just because you have found
25 someone guilty beyond a reasonable doubt of committing

1 capital murder, that doesn't mean you automatically answer
2 question No. 1 yes.

3 The law contemplates that what you will
4 do as a juror is wait and then weigh all the new evidence,
5 talk about that, deliberate the new evidence with the other
6 jurors, and then make the decision has the State proven that
7 beyond a reasonable doubt?

8 There's no automatic answers. Some
9 jurors frankly tell us, I can't follow the law. You know,
10 if I find somebody guilty, that tells me all I need to know.
11 He's going to be dangerous and they check off yes without
12 ever thinking about it.

13 But that's not what the law contemplates.
14 There may be fact situations where they commit a murder, but
15 you don't think they will be a continuing danger to society.
16 I can't tell you what those facts will be. There may be
17 other fact situations where you do think they are after
18 weighing the evidence. But the law contemplates there's no
19 automatic answers. Just because you find him guilty, you
20 don't automatically answer it yes. If that were true, there
21 would be no need for these answers, obviously. You
22 understand that?

23 A. Right.

24 Q. It's kind of like what they want to do, since
25 this is a death penalty, is they want the jurors to wait and

1 carefully deliberate all the information and then make their
2 decisions. Does that make sense to you?

3 A. Yes.

4 Q. Okay. We do this in our everyday lives. I
5 know you put in the questionnaire that you are, I believe, a
6 -- you inspect boilers?

7 A. Yes.

8 Q. And supervise that sort of thing?

9 A. Uh-huh.

10 Q. And I take it from that, I'm sure from your
11 duties, a lot goes into that. You gather a lot of
12 information before you pass a boiler or they have to pass
13 inspection?

14 A. Right, correct.

15 Q. Because I know from reading in the newspapers,
16 bad things can happen if those things -- something goes
17 wrong with them.

18 A. And it has happened, so --

19 Q. And that's the same principle that applies as
20 a juror. You want to get all the information in before you
21 make this decision and then decide. Do you feel that you
22 can follow that rule of law, that you can wait, and then
23 after -- if you found someone guilty, you would wait and
24 then wait for all the evidence to come in, in the punishment
25 phase, and then decide whether the State proved it beyond a

1 reasonable doubt?

2 A. Yes.

3 Q. Okay. The fact that you found him guilty
4 doesn't mean you will automatically answer it yes. You will
5 wait and if you don't think the State proved it, you will
6 answer it no. And if you think they did, you will answer it
7 yes. In other words, you are open to a yes or no answer
8 either way?

9 A. That's correct.

10 Q. Okay. Fair enough. Now, the second Special
11 Issue, you get to that next. And just like the first one,
12 it starts out with a no answer and the State, again, has to
13 prove to you that it should be answered yes. And it asks
14 whether the defendant actually caused the death of the
15 deceased or did not actually cause the death of the
16 deceased, but intended to kill the deceased or another, or
17 anticipated that a human life would be taken.

18 That question has to do with that party
19 or accomplice law we talked about. If they are not the
20 actual triggerman, what we have to prove is that they had
21 the intent to kill. Maybe they wanted to kill the person,
22 but one of the other accomplices did, or that they
23 anticipated that a human life would be taken. We have to
24 actually prove that. To get him guilty we have to prove he
25 should have and then we have to go a step further in the

1 punishment phase and prove to you from the evidence that he
2 did anticipate. Again, that's just going to depend on the
3 evidence, how the crime went down, whether it was planned,
4 how brutal it was, what his actions were in it.

5 Then, again, you may hear something in
6 the punishment phase regarding his past history that would
7 aid you in helping you answer that question yes or no. But
8 the point is, it's just like question No. 1. The State has
9 to prove to you beyond a reasonable doubt. Just because you
10 found him guilty, just because you found he's dangerous, you
11 don't automatically answer that question yes. You have to
12 consider that question separately and then make that
13 decision after weighing everything you heard. Could you do
14 that?

15 A. Yes.

16 Q. Okay. Then the last question is the
17 mitigating issue question. It's a little different.
18 Neither side has the burden of proof. You just simply look
19 at everything you have heard about the person's background
20 and the crime and see if you think there's sufficient
21 mitigating evidence. Kind of runs on, but it asks whether
22 taking into consideration all the evidence, including the
23 circumstances of the offense, the defendant's character and
24 background, and the personal moral culpability of the
25 defendant, there's sufficient mitigating circumstance or

1 circumstances to warrant that a sentence of life
2 imprisonment, rather than a death sentence, be imposed.

3 This question, we kind of refer to it as
4 the 'safety net. It allows a jury to show mercy, so to
5 speak, if they think that's the right thing to do in their
6 heart, based on some piece of evidence.

7 You are not required as a juror to tell
8 us what you think mitigating evidence would be. Most jurors
9 haven't contemplated these issues. And we don't require you
10 to tell us what it would be or come up with something. All
11 the law requires you as a juror is to be able to tell the
12 Court I will keep my mind open to it.

13 If I think something is sufficiently
14 mitigating where I think he deserves a life sentence, I will
15 answer the question that way. If I don't, I will answer it
16 no. It's just a matter of keeping your mind open and then
17 weighing everything in his background, his character, and
18 then the crime, to see if you think it's there. Do you feel
19 that you can do that?

20 A. Yes.

21 Q. Do you feel that's a fair question in a death
22 penalty case for you to look at everything in his
23 background?

24 A. Oh, yes, uh-huh.

25 Q. Okay. I had a juror -- you know, the law is

1 this. Just because you found him guilty, just because you
2 found he's a danger to society and just because you found he
3 intended someone to die, anticipated that a life would be
4 taken, there still may be a fact situation or something in
5 his background which tells you he should get a life
6 sentence. What that is, I don't know. But it still could
7 be there. The law contemplates that.

8 I had a juror, I guess he explained it
9 best this way, is when he would be thinking about these
10 questions, it's like a window going down. If we prove
11 question No. 1, that window would be closed a little bit.
12 Question No. 2 more, and then, finally, if he believed there
13 wasn't mitigating evidence, the window would be closed. But
14 when you get to question No. 3 your window still has to be
15 open.

16 It depends on the juror. You know, one
17 of them told us the window would be open about that much,
18 maybe, if we had proven all the other things. And the other
19 juror said it would be about halfway open. But the point is
20 you would have to be able to keep your mind open and then
21 decide. In other words, just because you found him guilty
22 and dangerous, you don't say, I would never give him a life
23 sentence. You would have to tell the Court, I will wait and
24 see what it is, and if I think there's something
25 sufficiently mitigating, then I will do that. You feel that

1 you can do that?

2 A. Yes.

3 Q. It might be something in his background.

4 Maybe he was abused as a child. Some jurors have told us
5 that. The way we got this question originally was there was
6 a defendant who had some mental retardation questions. He
7 was born with a mental defect and, in fact, the mental
8 defect might have made him dangerous, more prone to
9 violence, but it wasn't his fault, because it was a birth
10 defect.

11 And at that time, at his first trial,
12 there was no question that the jury could consider. They
13 could only consider that and find he's dangerous. So what
14 the Court did is they plugged this new question in and said,
15 well, there might be something in his background, a mental
16 defect that would allow you to give him a life sentence and
17 show him mercy that way. But it's a catch-all. It lets you
18 make a decision based on your heart and based on your common
19 sense.

20 But, again, you don't have to tell us
21 what it would be, but just be able to assure the Court that
22 your mind would be open to it. Do you feel that you can do
23 that?

24 A. Yes.

25 Q. Okay. Let me get into an issue that may or

1 may not come up. Sometimes jurors find defendants guilty on
2 what we call lesser included offenses. One of the lesser
3 included offenses of capital murder is actually robbery or
4 aggravated robbery.

5 Let's say we maybe charge a guy with
6 committing a murder during the course of a robbery, but you
7 feel you had a reasonable doubt whether he ever committed
8 murder. But maybe you feel he committed aggravated robbery.
9 In those situations the penalty range is different. It goes
10 from life or 99 years at the heavy end and all the way down
11 to five years in prison at the light end and anywhere in
12 between, 20, 30, 40 years.

13 The law says that as a juror you have to,
14 once again, keep your mind open, and then weigh everything
15 in his background, anything you find about his background in
16 the punishment phase, and then decide what you think the
17 appropriate punishment is.

18 If you think it's a life sentence, you
19 have got to be able to assess that. If you think the right
20 thing to do is five years in prison, the minimum, you can do
21 that. We have jurors do both all the time, five years all
22 the way up to life, 20, 30, 40 years, whatever they think is
23 necessary based on the evidence.

24 Do you feel you can keep your mind open
25 to the full range for the offense of aggravated robbery and

1 assess either the maximum or the minimum or anywhere in
2 between, just based on what the evidence tells you?

3 A. Yes.

4 Q. Okay. Some rules of law that apply in every
5 criminal case are these. The presumption of innocence.
6 Just because a person gets arrested, gets indicted by a
7 grand jury, or the fact that we're going through this
8 process, doesn't mean he's guilty. The Judge will instruct
9 you that the defendant must start out with the presumption
10 of innocence and the State has to overcome that presumption
11 but putting on evidence.

12 And every juror must start out a
13 defendant with that presumption of innocence and require us
14 to prove our case beyond a reasonable doubt. Do you feel
15 that you could do that?

16 A. Yes.

17 Q. I think you even said from anything you have
18 read about the case, you don't remember this man's name, you
19 don't know what the facts are against him, so you would be
20 able to give him the presumption of innocence?

21 A. I know absolutely nothing about him.

22 Q. The burden of proof is always on the State of
23 Texas and never shifts to the defense. You know, you can't
24 require them to prove his innocence. I'm sure common sense
25 will tell you, you think they are going to try to prove his

1 innocence or ask questions, cross-examine, argue.
2 Technically under the law, they don't have to. They just
3 have to show up and not ask a question. I anticipate they
4 will, but they don't have to because the burden of proof
5 never leaves this table.

6 At the close of the evidence, if they
7 haven't asked a question or put on a witness and you look at
8 all the evidence and decide there's a reasonable doubt, you
9 find him not guilty. You can't require them to prove
10 anything to you. It's just based on whether you have that
11 reasonable doubt and whether we have met that burden.

12 Can you follow that rule of law and
13 require the State of Texas to prove this case beyond a
14 reasonable doubt?

15 A. Yes.

16 Q. And not require the defense -- not put a
17 burden of proof on them, just keep that burden of proof here
18 on the State of Texas?

19 A. Right.

20 Q. Okay. The burden of proof goes to every
21 portion of the indictment. Let me give you a couple of
22 examples. One is the identity. We have to prove who
23 committed this crime. Obviously, at the close of the
24 evidence, if you had a reasonable doubt about a defendant's
25 identity, you would find him not guilty, common sense

1 proposition.

2 But that burden of proof goes to every
3 element, just not identity. You know, if -- we have to
4 prove that it happened in Dallas County, and under the law
5 Dallas County is just as important as the identity of the
6 defendant.

7 Let me give you kind of a way-out example
8 to demonstrate that. Perhaps you might sit on a jury and
9 you believe we have proven everything, who did the killing,
10 how they did the killing, who they murdered, but this case
11 occurred near the Tarrant County border. Maybe the evidence
12 really shows it happened in Tarrant County and you believe
13 that. Well, in that particular case you would have a
14 reasonable doubt about the county it occurred in, and you
15 would be obligated under the law to find the defendant not
16 guilty.

17 Probably wouldn't want to do it. It
18 would leave a bad taste in your mouth. You have every right
19 to be outraged at our poor preparation and I'm sure it would
20 cause us to lose our jobs. You could have us fired. But
21 you can't help us out as a juror. And I don't anticipate
22 that happening. But I use that as an example to demonstrate
23 how that burden of proof goes to every part of the
24 indictment.

25 And a juror is kind of like an umpire at

1 a baseball game. He just has to call the balls and strikes.
2 He can't give us an extra strike or an extra ball when we
3 need it. Do you feel that you can follow that rule of law
4 and make the State prove everything, every part of -- every
5 element of the indictment to you beyond a reasonable doubt?

6 A. Yes.

7 Q. Okay. Fifth Amendment, you know, you have
8 probably heard that if a person is charged with an offense
9 and they want to testify, no one can stop them. They get up
10 there and testify and you judge them like you would every
11 other witness.

12 But if they choose not to testify, you
13 can't hold that against them. It's kind of a cornerstone of
14 democracy. There could be many reasons why a person may not
15 choose to testify. He may not be very well educated. He
16 may have a speech impediment, be very shy in public, may not
17 perform well, may not be guilty, but could look guilty just
18 by the way he testifies. He may not be any match for an
19 experienced prosecutor. His lawyer might tell him, I don't
20 think that they have proven the case. He's just following
21 his lawyer's advice and doesn't take the stand. Could be
22 he's real guilty and we can make him look bad. There could
23 be a lot of reasons.

24 If someone chooses not to testify, the
25 Court instructs the jury you cannot hold that against him.

1 In other words, you can't consider that in any way as
2 evidence. You just have to just decide the case from what
3 you have heard. If you have a reasonable doubt, you find
4 him not guilty. If you think the State has proven the case
5 beyond a reasonable doubt, you would find him guilty. But
6 you just can't consider that proposition. Do you feel that
7 you can follow that rule of law?

8 A. Yes.

9 Q. Police officers often testify in criminal
10 cases. Most of our jurors have a lot of respect for police
11 officers. But the law says you can't start them out ahead
12 of the other witnesses before they testify. There's good
13 cops, bad cops. You know, you have got your hardworking
14 ones and you have some lazy ones, just like boiler
15 inspectors or postmen or prosecutors or defense attorneys.

16 And the law says you have to wait and
17 judge their credibility when they hit the witness stand.
18 Could you follow that rule of law?

19 A. Yes.

20 Q. Okay. Parole laws sometimes come up in the
21 news. The Judge will instruct you in a capital murder case
22 that if someone is convicted and given a life sentence in a
23 capital murder case, they have to spend forty calendar years
24 in prison before they can even become eligible for parole.
25 That is day for day.

1 But he will also instruct you that you
2 can't consider parole laws in deciding how to answer these
3 questions or what the appropriate punishment is. You just
4 have to consider a life sentence to be a life sentence. Do
5 you feel that you can do that?

6 A. Yes.

7 Q. Okay. The bottom line is, and I think you
8 have covered this pretty good, Mr. Jones, is that you have
9 to wait and listen to all the evidence before you make any
10 of these decisions. In other words, you can't have a
11 kneejerk reaction. You can't automatically answer these
12 issues yes. You have to wait, follow the law, and then make
13 your decisions based just on what you hear in the courtroom.
14 Do you feel that you can do that?

15 A. Yes.

16 Q. Keep your mind open until every piece of
17 evidence is in, in the guilt/innocence stage and also the
18 punishment stage, and kind of let the chips fall where they
19 may? If you think these questions should be answered in a
20 way in which a death sentence would be appropriate, you can
21 do that. You could also be comfortable if you think that
22 the questions are answered in a way in which he gets a life
23 sentence after he's committed capital murder, you can do
24 that. It's just going to depend on the facts of that
25 particular case.

1 A. Uh-huh.

2 Q. Do you feel that you can do that?

3 A. Yes.

4 Q. Okay. Do you have any questions over anything
5 we've gone over? I know I've gone over pretty quickly a lot
6 of different principles, kind of a continuing theme. But
7 the last thing I like to do is ask if you have any questions
8 over anything we've covered at all?

9 A. No, sir, I don't believe so.

10 Q. Okay. I appreciate your patience with me, Mr.
11 Jones. That's all the questions we have.

12 CROSS-EXAMINATION

13 BY MS. BUSBEE:

14 Q. Mr. Jones, good morning.

15 A. Good morning.

16 Q. You've answered yes a lot, but I kind of like
17 to hear you tell me your thoughts on some things. Sometimes
18 we have jurors who tell us way too much and sometimes we
19 have people who listen to the questions and answer them.
20 But we don't really feel like we know you yet, so we'll talk
21 to you a minute, if you don't mind too much.

22 What brought you and your wife here to
23 Dallas from Greenville, Mississippi?

24 A. It was the economy in that area was real bad.
25 And the type of work I was in, it was an opening that came

1 up with an insurance company doing pretty much what I'm
2 doing right now with the State and so we were ready to make
3 a move. And so we moved out here in 1978. We moved to
4 Mesquite. And, you know, it was just a lot more opportunity
5 here than what we had back there.

6 Q. I'll ask you about that. It looks like you
7 had done this prior to working for the State of Texas. You
8 had inspected boilers for an insurance company?

9 A. Several insurance companies.

10 Q. What kind of training do you get to be an
11 inspector?

12 A. Mine started off, I worked for a boiler
13 manufacturer for ten years in Mississippi from Greenville,
14 which qualified me to be tested -- we take what they --
15 what's called a National Board Exam. It's a commission that
16 we have to have to -- which is good worldwide to do boiler
17 inspections and you have to be employed by an inspection
18 agency of some sort, which an insurance company would fall
19 -- certain insurance companies would fall within that. And
20 the state jurisdictions would -- also, the various states
21 would honor this commission.

22 Q. So like a certification --

23 A. Right.

24 Q. -- or something. Did you have occasion to
25 have to be called into court? Was that your kind of job

1 where you had, like if there's a lawsuit or something?

2 A. No, I never had to. I mean, that possibility
3 is there, but I've never had it.

4 Q. While I'm thinking about it, if you do your
5 job perfectly, hopefully there are no lawsuits?

6 A. Hopefully.

7 Q. So --

8 A. Of course, we can't -- when we go in and do an
9 inspection, we can't catch everything, you know, so, you
10 know, it's possible something could happen.

11 Q. Things like metal fatigue or something you
12 might not be able to --

13 A. Right. There are things you can't see.

14 Q. Okay. And I think you said that you came to
15 work for the State of Texas and you have gone back. Have
16 you retired from a job and are working for the State or is
17 this a better job?

18 A. I retired from the insurance company. Factory
19 Mutual -- used to be Factory Mutual Engineering, they merged
20 with two insurance companies and became Factory Mutual
21 Insurance, FM Global. And so rather than quit, I was able
22 to retire. And so I retired from them and started with the
23 State, doing basically the same thing that -- I had to get
24 away from all the overnight travel. That's the main reason
25 I left the company I was with. I was gone a lot.

1 Q. And I know you have to go to Austin today.
2 Didn't you say that to the bailiff that you needed to --

3 A. Right. I was able to -- I talked to Austin
4 and they said that I didn't have to come down, so it worked
5 out okay. I found out yesterday afternoon.

6 Q. Fair enough. Do you still travel
7 significantly in your job now?

8 A. Not overnight. I'm out about maybe three
9 nights a year. That's when I make a trip to Austin. We
10 usually spend the night down there.

11 Q. And so I take it other people can take over
12 your duties, if you are involved in a jury trial?

13 A. Yes. There's four of us that work out at the
14 Dallas office.

15 Q. Some people have to go on vacation, too, so
16 sometimes we get self-employed people who are going, oh, my
17 God, I can't be gone for two weeks. Okay. Fair enough.

18 A. Most -- a big part of my work is just
19 walk-in-type stuff. It's not scheduled. I do make
20 appointments, too, for certain inspections. But I would say
21 probably 80 percent of it is just walk-in, unannounced-type
22 thing.

23 Q. Good. Those of us who go in public buildings
24 are grateful for that.

25 A. Yeah. And that's the way we want to do it.

1 We want to see what's happening without giving anybody a
2 chance to get in there and fix things up before we come in.

3 Q. All right. What happens if you find a
4 violation? Are there grades of violations, for instance --

5 A. It's different severities. There's a
6 violation form that we write up. Depending on what it is,
7 we give them X number of days to get it fixed and then we
8 come back and do a followup. If it's something that is
9 really dangerous, we can shut them down right then and say
10 you have to cut this thing off until you get it fixed.

11 Q. Have you ever had occasion to do that?

12 A. Once. It was a dry cleaners that the boiler
13 was in terrible shape. It looked like it had overheated and
14 it was just about to go. So I told him he has got to
15 replace it and that's the only option he had. I try to work
16 with them as much as I can and, you know, especially in
17 these -- I'm using dry cleaners as an example because that's
18 where you see most of your high pressure boilers. And if
19 you shut him down, of course, you shut down his whole
20 operation for possibly days. So we try to help them as much
21 as we can, but there's limits to what we can do.

22 Q. Sometimes a business man can't see the profit
23 margin isn't really the bottom line.

24 A. That's right. That's right. If he loses that
25 boiler, he's lost a lot more than, you know.

1 Q. Possibly some lives, I guess?

2 A. Yes, it's possible. These things go off, they
3 could go off like a bomb. And I've seen pictures of them
4 where they've taken out whole apartment complexes before,
5 two or three stories, you know. Oklahoma was a good
6 example. They had a hot water heater in a school several
7 years ago that exploded and somebody removed the safety
8 valve. It overpressured and blew up and killed several
9 children.

10 Q. Wow.

11 A. So even a hot water heater can become a bomb,
12 really.

13 Q. Now you make me want to go home and check my
14 water heater. And that's kind of what I envisioned, but I
15 didn't think -- I didn't know quite that much about it and I
16 guess it makes sense. But I didn't know they were in the
17 dry cleaners.

18 A. Yeah, probably 99 percent of the dry cleaners
19 has got a boiler in them.

20 Q. I don't trust dry cleaners, so it's just
21 another thing to take a look at the next time I go in there.
22 Your son-in-law is a city marshall in Garland?

23 A. Right.

24 Q. I'm guessing because that's nearby, that you
25 are probably pretty close to him?

1 A. Yeah. Well, he lives about two blocks from
2 me.

3 Q. Okay. How long has he been a city marshall?

4 A. He's been in Garland, I can't remember for
5 sure. I'm thinking three to four years. Before that he was
6 with Dallas Police, stationed out at Love Field.

7 Q. Okay.

8 A. In security out there.

9 Q. Yeah. And then I seem to remember they closed
10 that station.

11 A. They did. They dismissed them and that's when
12 he left there and went to the City of Garland.

13 Q. Now, I'm not real sure -- we have so many
14 little different police agencies around here now. In
15 Dallas, city marshalls sometimes go out and execute
16 warrants. What do they do in Garland?

17 A. Yes, he does that, too, uh-huh. He makes
18 pickups and issues warrants.

19 Q. So he's a fully commissioned peace officer?

20 A. Right.

21 Q. Have you talked to him about the fact that you
22 are coming down on this case, mentioned it to him?

23 A. Yes, uh-huh. You know, I told him where I was
24 coming.

25 Q. Well, the reason I ask that and I'll be frank

1 with you is you saw how many folks came down the morning you
2 were down?

3 A. Uh-huh.

4 Q. We had that many in the afternoon. And
5 because a life is at stake and a life has been lost in this
6 type of case, we do this torturous questioning of people
7 just to get just the right sort of person on the jury to be
8 the fairest that they can be. And people's emotions are
9 involved in this type of case, can't be helped.

10 But, you know, as counsel for the
11 defendant in this case, I have to ask you whether or not it
12 would make you uncomfortable to give a life sentence on a
13 case where a peace officer has been killed?

14 A. I don't think any more so than any other
15 person. I wouldn't separate whether it's a police officer
16 or whether it's an individual.

17 Q. I mean -- and I apologize, but I have to ask
18 these questions because this is the only time I get to do
19 that. You said that you were on a jury back, looks about
20 four years ago?

21 A. Best I remember, I think it was about that far
22 back.

23 Q. Do you have any -- we asked that question, but
24 I'm going to ask you, again. What was that like? Did that
25 bother you having to make a decision on custody?

1 A. It did some. It was kind of -- I looked at it
2 kind of like we were making a decision for this child where
3 -- which parent he was going to go to and live with. And at
4 that time he was with his father and I felt like really both
5 parents weren't really that good. So it was kind of the
6 lesser of the two evils.

7 But the father -- in that case, the
8 father ran a nightclub, had the child there, and he also, we
9 found out, had a convicted child molester that had been
10 babysitting in the past. So we felt like he shouldn't be in
11 that environment, so -- and the mother had taken him to
12 soccer practice and school activities and this kind of
13 thing. So I felt like he needed her. He should be with her
14 rather than the father.

15 Q. Well, I kind of see how you would. I wonder
16 how it got that far?

17 A. I don't know how it ended up with him having
18 custody. Like I said, she was unemployed, I think, at one
19 time for quite a while and she was a waitress-type thing and
20 I think she wasn't making much money and that influenced
21 maybe who got him, originally.

22 Q. That is sad. How old was he?

23 A. He was either 11 or 12. I can't remember. I
24 think 12.

25 Q. You remember a whole lot more than most people

1 do about prior service. I can see why you wouldn't need to
2 revisit that or be concerned about that because it was
3 pretty clear cut?

4 A. Right.

5 Q. Um, I'm sure when you came down in May, you
6 weren't thinking too much about -- you were just coming down
7 for jury duty as you were in the past. But since then when
8 you were notified and asked to come down here for an
9 individual interview, have you done any soulsearching or
10 thinking about sitting on a death penalty jury?

11 A. Yes, I really have. When you get to thinking
12 about the decision you might have to make, it does make you
13 think about that and kind of give it a second thought.

14 Q. Any reluctance to sit on this jury?

15 A. No. I don't have any reluctance to sit on it.
16 Like I said, it just makes you think again, you know, what
17 the consequences would be at the end or what it could be,
18 rather.

19 Q. It requires -- the Judge uses this expression,
20 kind of a discipline, because the rules are complex, kind of
21 like your rules are. I mean, I wouldn't have the first
22 notion how to inspect a boiler. But the law doesn't let me
23 go down there and do it, just like, I guess my analogy is,
24 and yet we invite jurors in to make decisions on this case
25 and it's complex, too.

1 So we get to ask you about some of these
2 rules and to see not so much if you will follow the law,
3 because, believe me, by the time you have been selected for
4 this process you are one of probably less than ten percent
5 of the people who are asked to actually come down after we
6 agree. So we know that you can follow the law and are
7 lawabiding and possibly that you agree with the law.

8 But I'm going to go a little further and
9 ask you if you have feelings against it, which you are
10 certainly entitled to. And one of my concerns with any
11 juror is this question No. 1. You know, you stated that you
12 can follow the law that a person who is a party to a capital
13 murder can be found guilty of a capital murder. And most
14 people don't have a problem with that.

15 But once somebody has been found guilty
16 of a capital murder, it's certainly not an automatic death
17 penalty, in fact, just the opposite. It's an automatic life
18 sentence. And by law other questions have to be proved by
19 the State beyond a reasonable doubt.

20 And so -- but my question for you on
21 Special Issue No. 1 about this probability that a person
22 would be a continuing threat, a continuing danger, that is
23 one of the questions that has to be answered. And I thought
24 maybe you got cut off before you finished answering that
25 question earlier about the probability.

1 If you found somebody guilty of a case of
2 capital murder, a hypothetical one, would you pretty much be
3 persuaded that they would be a future danger without -- I
4 mean, before you heard other facts?

5 A. No, I would have to hear the other facts
6 before I could make that determination.

7 Q. Okay. Now, the question of probability, what
8 does that mean to you? What is "probability"?

9 A. Well, the likelihood it's something that is
10 going to happen, you know, and in all likelihood it's going
11 to happen.

12 Q. See, this is what people hate lawyers for. So
13 I hate splitting hairs with you here, but we have people use
14 probability and possibility interchangeably. But you
15 probably very well know the difference between possibility
16 and probability.

17 A. Right, uh-huh.

18 Q. So are you comfortable with the way we have
19 been describing this probability as more likely than not?
20 Is that --

21 A. Um, well, I would think maybe possibility
22 would be more appropriate than probability there.

23 Q. Because it's -- this question is sort of a
24 public safety question, really. And that's why I want to
25 ask you. I sensed that when you were talking to Mr. Shook.

1 And if that's your opinion and that's how you feel, that's
2 fine. I mean, I have some real problems serving on certain
3 juries on laws that I may not agree with, income tax.

4 But in any event, if you feel that way,
5 it's better to tell us now --

6 A. Uh-huh.

7 Q. -- than to be in a bad situation down the
8 road.

9 A. Uh-huh.

10 Q. So if you thought that there was a chance or a
11 possibility that a person would commit criminal acts of
12 violence in the future, you would answer that question yes?

13 A. That one? Well, I really don't know, to be
14 truthful. I guess it will take more proving on possibility,
15 rather than probability.

16 Q. Tell me what you mean when you said that?
17 I've confused myself now.

18 A. More evidence, possibly. Somebody is going to
19 possibly do something, I think they are not as likely to do
20 it as probability, as probably would do it.

21 Q. So baldly stated, are you telling us that if
22 you felt there was a possibility you would answer that
23 question no?

24 A. I think I would. If it was possibility,
25 rather than probability, yeah, I would answer no.

1 Probability would be answered yes.

2 Q. Fair enough. And that's something that the
3 State is required to prove to you. Sometimes we throw out
4 the terms like burden of proof, what does that mean? It's a
5 John Grisham title. It's just a phrase. But the point of
6 the matter is that the jury has to look to the State's table
7 for the proof, in other words, not ask the defense to, or
8 expect the defense, to put something else on. That's not
9 the way it works.

10 Are you comfortable with that? Because
11 I'm not telling you what is going to happen in this case. I
12 can't and I wouldn't. But would you need to hear anything
13 from the defense, in order to make up your mind about
14 probability? I mean, would you need to hear something?

15 A. Yes, I would.

16 Q. Okay. Can you elaborate on that?

17 A. Yeah. Well, yeah, there again, I would need
18 to know some background information.

19 Q. So don't let me put words in your mouth,
20 please, because that just makes us stay here longer. Would
21 you want to hear from the defendant himself about his
22 background or his --

23 A. I don't think I would have to hear from him,
24 but I would think the defense would want to give some kind
25 of explanation.

1 Q. Okay. Then if you -- keeping this a
2 hypothetical jury, on this hypothetical jury, after the jury
3 has found somebody guilty of capital murder and you have
4 either maybe you heard something from the State or maybe the
5 State has not put anything on, because you can just consider
6 the crime itself, of course, for that answer. Some capital
7 murders will effectively answer that future dangerousness
8 question without too much problem. In your mind, you would
9 really need to hear from the defense, in order to answer
10 that question no?

11 A. Yes.

12 Q. I think that's fair enough. So you need to
13 hear a little bit from both sides --

14 A. Right.

15 Q. -- before you can answer that question no? Is
16 that -- I don't want to put words in your mouth. I want to
17 make sure I have stated it correctly.

18 The second Special Issue, whether the
19 defendant caused the death of the deceased, you know, I
20 think we have previewed this for you. This is a case where
21 the defendant, the theory of the prosecution is not that he
22 actually pulled the trigger or actually caused the death,
23 but was a participant of some sort in this crime.

24 You stated that, you know, your gut
25 feeling was a person who participates gets the same. But

1 sometimes I don't know if people mean are convicted of the
2 same offense or get the same punishment?

3 A. I was going by the example he gave in that
4 case.

5 Q. What do you think about punishment for someone
6 who is not a triggerman, in general, now?

7 A. I still feel like that if a person is with a
8 person and a crime like that is committed, unless I hear
9 something to convince me different, that they are just as
10 guilty as the person that pulled the trigger.

11 Q. Now, when we get to -- and I think that that
12 is a fair statement of the law. They are as guilty. Now,
13 but Special Issue No. 2 is a punishment issue and that is,
14 do you think -- you would have to answer that question yes
15 for a death penalty case and you would have to answer it no,
16 if it wasn't proved to you to your satisfaction beyond a
17 reasonable doubt.

18 Could you answer that question no, if you
19 found somebody guilty of a capital murder?

20 A. I guess under -- depending, there again,
21 depending on the evidence, you know, or lack of evidence.

22 Q. All right. Would --

23 A. I wouldn't say that's locked in one hundred
24 percent yes without knowing the facts.

25 Q. Okay. Sure. So this -- the way that the

1 Legislature has written this, that's okay with you? That's
2 within the way that you think about things?

3 A. Oh, yes.

4 Q. Okay. Fair enough. Now, we breezed over this
5 mitigation. Mitigation means -- and we're just lawyers
6 giving it our own spin, so to speak. But mitigation means I
7 heard something in this case that even though I have found 1
8 and 2 to be yes beyond a reasonable doubt, I don't want to
9 assess the death penalty in this case for whatever reason.
10 Could you do that?

11 A. Based on the evidence, I could make that
12 decision.

13 Q. So if you have found that they are a future
14 danger and that they intended that a human life would be
15 taken, you could still assess a life sentence based on some
16 other fact that might have softened your heart towards
17 giving the death penalty?

18 A. That's kind of hard to answer without knowing
19 what the evidence --

20 Q. But it's the only way that we can do it, so we
21 have to kind of put you on the spot. If you really don't
22 think that you can --

23 A. I would say it's possible that I could answer
24 that way.

25 Q. That's fair enough. You have told us that

1 you, like everyone else, has heard some publicity about this
2 particular case. And now that you know what the scheme of
3 our law is, have you formed an opinion in this case as to
4 future dangerousness?

5 A. No.

6 Q. Or as to whether or not you could consider any
7 mitigating issues in this case?

8 A. No, I haven't formed any kind of opinion.

9 MS. BUSBEE: I have no other questions of
10 this witness, Your Honor.

11 THE COURT: Mr. Jones, you answered one
12 of Ms. Busbee's questions regarding Special Issue No. 1. I
13 want to go back over that with you. The law requires the
14 State to prove Special Issue No. 1 and Special Issue No. 2
15 beyond a reasonable doubt.

16 PROSPECTIVE JUROR: Uh-huh.

17 THE COURT: The defense has no burden to
18 put on any evidence at all.

19 PROSPECTIVE JUROR: (Prospective juror
20 nods head.)

21 THE COURT: You said that you understand
22 that concept. And one of her questions, would you like to
23 have some evidence from the defendant or would you like to
24 hear him testify? Your answer was, no, I don't have to hear
25 from the defendant, but I might -- I can't remember the

1 exact word. I would like to hear from the defense or I
2 would think you would hear something from the defense before
3 I could answer that question no.

4 Do you understand, sir, that they can sit
5 there and do crossword puzzles, they don't have to present
6 any evidence at all? It's the State's burden to prove to
7 you beyond a reasonable doubt Special Issue No. 1 and 2.

8 PROSPECTIVE JUROR: Okay. I guess I
9 misunderstood.

10 THE COURT: Now that you understand the
11 law, could you answer Special Issue No. 1 yes or no,
12 depending on the evidence you hear from the State?

13 PROSPECTIVE JUROR: Yes, I could answer
14 that one.

15 THE COURT: Same question for No. 2.

16 PROSPECTIVE JUROR: Yes.

17 THE COURT: Thank you, sir. If you would
18 wait for us outside, I'll have you back in just a minute.

19 [Prospective juror out]

20 THE COURT: What says the State?

21 MR. SHOOK: State has no challenges for
22 cause.

23 THE COURT: Defense?

24 MS. BUSBEE: Your Honor, we will
25 challenge juror No. 118, Mr. Jones, for cause. And the

1 record will reflect this that he stated unequivocally that
2 he would need to have evidence from the defense before he
3 could answer Special Issue No. 1 in the negative. And he
4 answered it in a manner that I think indicates he understood
5 the question and he answered it in a manner that indicated
6 that he knew what the law was. He didn't say like to or
7 need to. He said he could not answer that question in the
8 negative without hearing from the defense, and, therefore,
9 his answer indicated unequivocally that he, himself, would
10 shift the burden to the defense to -- in order to answer
11 question, Special Issue No. 1 in a negative -- in the
12 negative and, therefore, he cannot follow the law and is not
13 qualified to be a juror. And so we submit him for cause.

14 THE COURT: Motion denied. After
15 Mr. Jones understood the law that I gave him, indicated that
16 he misunderstood. He understands the law certainly a whole
17 lot better than Ms. Crawford did and I find he's qualified.

18 MS. BUSBEE: Just for the record, I'm
19 making this objection under the due process and Sixth
20 Amendment and Fifth Amendment privileges or Amendment to the
21 Constitution of the State -- of the United States and
22 Article 1, Section 10 and Section 6 and 8 of the Texas
23 Constitution.

24 THE COURT: So noted. The Court having
25 found Mr. Jones qualified, what says the State?

1 MR. SHOOK: State accepts the juror.

2 MS. BUSBEE: We would like to talk.

3 THE COURT: Please step in your office.

4 (Recess)

5 MS. BUSBEE: We will exercise a
6 peremptory challenge No. 4.

7 [Prospective juror in]

8 THE COURT: Mr. Jones, thank you for your
9 thoughtful service to this Court and we appreciate your
10 coming down. We're not going to seat you on this jury.

11 PROSPECTIVE JUROR: All right. Thank
12 you.

13 THE COURT: Thank you.

14 [Prospective juror out]

15 THE COURT: Mr. Davis.

16 [Prospective juror in]

17 THE COURT: Come on up, Mr. Davis. Good
18 morning, sir, how are you?

19 PROSPECTIVE JUROR: Good.

20 THE COURT: Sorry for the delay. We
21 never know how long an individual will talk to somebody. I
22 know the maximum time. I never know if we're going to use
23 it all. Obviously, you have had time to read the guide,
24 several times probably, the news, crosswords, these couple
25 of hours this morning, and now it's your turn.

1 Please, sir, don't think you have got to
2 understand everything in that guide that you have read. I
3 wanted to get you to begin thinking about the issues that
4 they are going to discuss. They're going to talk to you
5 about the laws, see how -- see if you understand how it
6 interrelates.

7 At the end of the process I have two
8 questions to ask. First one is, do you understand the law?
9 Second is, can you follow the law? That's my job here.

10 Only question I have for you at this time
11 before we begin is will you be able to serve this Court for
12 two weeks beginning on November 10th?

13 PROSPECTIVE JUROR: Yes.

14 THE COURT: Mr. Wirskye?

15 MR. WIRSKYE: May it please the Court.

16 ROY DAVIS,
17 having been duly sworn, was examined and testified as
18 follows:

19 DIRECT EXAMINATION

20 BY MR. WIRSKYE:

21 Q. Mr. Davis, how are you?

22 A. Fine.

23 Q. My name is Bill Wirskye and I'm the Assistant
24 DA that would be visiting with you for the next 30 minutes.
25 Again, we all appreciate your patience. Sometimes it drags

1 on a little longer than we anticipate. What I would like to
2 do with you is visit with you a little while about some of
3 the information you were kind enough to give us in that
4 pretty extensive questionnaire, talk to you a little bit
5 about your thoughts and feelings on the death penalty, and
6 then talk about some of the laws and some of the rules that
7 apply in a case where the State is seeking the death
8 penalty.

9 Now, you told us you are generally in
10 favor of the death penalty; is that right?

11 A. I support it.

12 Q. Okay. And why is that? What purpose do you
13 see having a death penalty?

14 A. Mainly because it's the law, like I think the
15 Government has a right to enforce it. I'm not -- I don't
16 know if I could pull the trigger, but since it is the law, I
17 support that.

18 Q. Would you be uncomfortable maybe serving as a
19 juror on a case?

20 A. Sure, that's a big decision.

21 Q. I guess what I mean, I know it's probably a
22 bad word. Everybody is uncomfortable. We know that not
23 everybody is cut out for these types of cases. A lot of
24 people when we talk to them are philosophically in favor of
25 the death penalty or in favor of it in the abstract, but

1 when you actually get down here and one step away from
2 making it on the jury, you see the defendant, a live, living
3 human, breathing human being, so much on the line, you know,
4 some people tell us they are just not cut out for it.

5 The analogy I like to use is the guys
6 that wash the windows in the skyscrapers downtown. I'm
7 deathly afraid of heights. There's no way that I could do
8 it. I think it needs to be done and it's an important job,
9 but I just couldn't do it. Just my fear of heights would
10 override anything.

11 What do you think about that, actually
12 being in the jury box and participating in a case like this?

13 A. Well, like I say, I think the State has the
14 right to do that. It is the law. Sitting up there and
15 deciding, I mean, it would be -- it would be tough to
16 actually be, you know, part of the decision to take
17 somebody's life.

18 Q. Do you think it's something that may bother
19 you on down the line, whatever decision you reached or
20 especially, I guess, if you sentenced someone to death, is
21 that something that -- we talk to people that tell us it may
22 weigh on my mind or weigh on my conscience on down the line.

23 A. I think the morning or the evening it was
24 administered, the next morning I would be -- I would -- it
25 would be a really difficult day for me.

1 Q. Again, we're not trying to shoehorn anybody
2 onto this jury. Let me run this past you. Talking about
3 the death penalty, I think most people in talking about
4 capital murder, that type of crime, envision kind of a
5 lone gunman going in, maybe holding up a 7-Eleven, killing a
6 clerk -- or liquor store and making off with the money.

7 But oftentimes crimes are committed by
8 groups or gangs of people and the law for any crime, even
9 for capital murder, allows us as a state to prosecute people
10 as accomplices. When you are talking about a capital
11 murder, I guess you can break it down to the triggerman, the
12 guy that actually caused the death, and the nontriggerman.
13 The accomplices, is what a lot of people call them.

14 And some people who are very strongly in
15 favor of the death penalty, actually draw a line sometimes.
16 They say I'm in favor of the death penalty, strongly in
17 favor of the death penalty, but I would limit it just to the
18 guy that actually pulled the trigger, just the person that
19 actually caused the death.

20 As far as these nontriggermen or these
21 accomplices, maybe we need to give them a life sentence and
22 lock them up as long as we can, but I just in good
23 conscience don't feel that the death penalty ought to be
24 available for those accomplices or the nontriggermen. Where
25 do you come down on that?

1 A. I don't know. What does the law say as far as
2 that? Are they just as guilty?

3 Q. The law allows us under certain circumstances
4 to prosecute those accomplices for capital murder and they
5 could also potentially face the death penalty. You know, I
6 can tell you what the law is. We're really just trying to
7 see what your feelings are.

8 A. Well, like I say, my feelings about this are I
9 support the law. I'm behind that. I don't -- you got to
10 watch who you hang out with, not necessarily guilty by
11 association, but you -- I mean, if you are participating and
12 don't try to stop it, you know.

13 Q. I guess, let's take the law out of it for a
14 second. Say you were Governor of Texas. You had the power
15 to kind of reconfigure the capital murder. Would you have
16 the death penalty available as an option for accomplices?

17 A. I don't know. Yeah, I guess depending on the
18 degree of accompanying the actual trigger puller.

19 Q. Okay. Depending on the facts?

20 A. Yeah.

21 Q. What the accomplice did --

22 A. Yeah.

23 Q. -- for lack of a better term? Let me run you
24 through this example or hypothetical real quick. Say
25 Mr. Shook and I get together with a third guy and we decide

1 the three of us are going to rob a bank. Mr. Shook is going
2 to have a pistol. He's going to go in and hold up the
3 teller. I'm going to come in with a bag, no weapon, and
4 collect the money. And we've got a getaway car driver out
5 front. That's the plan.

6 And we go to do that bank robbery and for
7 whatever reason, for some reason, Mr. Shook intentionally
8 shoots and kills the teller. Okay? He's committed an
9 intentional murder in the course of a robbery, which is
10 capital murder in Texas. He could be convicted and face the
11 death penalty.

12 What do you think about somebody in my
13 shoes, the accomplice, or the bagman as some people call it?

14 A. I guess in that case your intentions were not
15 to be part of that crime.

16 Q. I had no intent anyone would get hurt.

17 A. Yeah, I could lean towards you not being as
18 guilty of the murder as the shooter.

19 Q. If a person in my shoes didn't have the intent
20 for that death, that murder, is that something that you
21 think --

22 A. Well, in that case the other guy didn't have
23 the intent going in, I'm assuming.

24 Q. Mr. Shook, it was an intentional act. The law
25 tells us that intent can be formed in an instant, which is,

1 basically, in that example, what he did. He intentionally
2 shot and killed. Going in, at least, I just signed up for a
3 bank robbery. I had no intent anyone would get hurt. And
4 that's the point where some people say guys like me,
5 accomplices with no intent, the death penalty should just be
6 off the table.

7 A. I think you have to -- you need -- your
8 intentions matter a lot. If you don't intend to do it, of
9 course, I shouldn't intend to go in and rob the bank.

10 Q. Sure. You could still find me guilty of
11 robbery, aggravated robbery, and give me a life sentence.
12 But do you think that the death penalty should be on the
13 table?

14 A. I don't know. I don't know. I don't know how
15 to answer that.

16 Q. Okay. Taking it out of that context, let me
17 ask you this. You have told us, like everybody we talk to,
18 that you know something about this case, I guess from the
19 media. It's a high profile case. What do you remember
20 particularly about this case?

21 A. I just remember the seven guys escaping. I
22 live in Irving, so I remember them coming through Irving and
23 the officer getting shot. And then I remember thinking they
24 were idiots for not separating and going on living together
25 in Colorado and getting caught in Colorado. And one of them

1 killed himself.

2 Q. And I believe you told us you have actually
3 been to that Oshman's?

4 A. Yeah. And seen -- there's a little bench out
5 there for him.

6 Q. How do you think having actually been to the
7 crime scene, I guess, how do you think that might affect you
8 as a juror?

9 A. It's hard to not sit there and know what
10 happened and know that he was one of the guys that went
11 through and --

12 Q. And, I mean, that's why we talk to a lot of
13 people. Believe it or not, we talked to some people who
14 haven't heard anything about the case. We talk to some
15 people who have heard a lot about the case and tell us they
16 can kind of put that out of their mind. And we talk to a
17 certain group of people that say kind of in your position, I
18 know about the case. I may have been to the scene. And,
19 you know, I may have formed some opinions about the case,
20 but I just don't think I could put that out of my mind. I'm
21 just too into it. I know too much about it. I'm too close
22 to it, that type of thing.

23 Where do you think you fall into that
24 spectrum?

25 A. The hardest thing for me to get out of my mind

1 is that five of them have already been sentenced to death.

2 Q. Okay.

3 A. And it's -- it's real hard for me to think
4 that five were involved and intended and there and
5 participated and one stood over on the side and didn't want
6 it to happen.

7 Q. Give me just a second, Mr. Davis. I know you
8 have tax time coming up, right?

9 A. Uh-huh.

10 Q. And we may have some good news for you in a
11 second.

12 MR. WIRSKYE: Judge, I think we have an
13 agreement.

14 THE COURT: Mr. Davis, it's clearly
15 appearing to the Court that you know too much about this
16 case and having visited the crime scene, that this trial is
17 not one that you are going to be able to sit on. The
18 parties have agreed to excuse you. Thank you for your time
19 this morning. Sorry for the delay and coming in on a short
20 interview. But, see, we don't know where a person might end
21 up. So thank you and you are free to go.

22 [Prospective juror out]

23 THE COURT: Mr. Evans.

24 [Prospective juror in]

25 THE COURT: Thank you. You may be

1 seated. Good afternoon, how are you?

2 PROSPECTIVE JUROR: Fine.

3 THE COURT: And we have David J. Evans.

4 PROSPECTIVE JUROR: Yes.

5 THE COURT: Good afternoon, Mr. Evans.

6 Thank you for being here on time. As you can see how many
7 courts start on time, but we do.

8 PROSPECTIVE JUROR: None that I have
9 seen.

10 THE COURT: Well, you can chalk one up.
11 I appreciate you being here. Have you had an opportunity to
12 review the guide that I have provided for you?

13 PROSPECTIVE JUROR: Yes.

14 THE COURT: I know it's a lot of law to
15 hand somebody. We don't expect you to understand it
16 completely at this point. The lawyers are going to visit
17 with you about your questionnaires and that's why I provided
18 that for you because you don't remember the answers you
19 made. The objective here is for you to understand the law.

20 PROSPECTIVE JUROR: Okay.

21 THE COURT: My function here today is two
22 fold, one to make sure you understand the law; two, if you
23 understand the law, can you follow the law? That's the big
24 picture for me. If you don't understand the questions, just
25 ask to rephrase the question, give me another example,

1 however you want to get there.

2 Only question I have for you before I let
3 the State begin, will you be able to serve this Court for
4 two weeks beginning on November 10th?

5 PROSPECTIVE JUROR: Yes.

6 THE COURT: Mr. Shook?

7 MR. SHOOK: May it please the Court.

8 DAVID EVANS,

9 having been duly sworn, was examined and testified as
10 follows:

11 DIRECT EXAMINATION

12 BY MR. SHOOK:

13 Q. Mr. Evans, my name is Toby Shook. I'll be the
14 prosecutor speaking to you this afternoon. I believe you
15 have been down on jury duty several times before in the
16 past; is that right?

17 A. Yes.

18 Q. Okay. Then you are aware that we usually
19 speak to the jurors as a group, but because it's a capital
20 murder case in which we're seeking the death penalty, the
21 law prescribes us going through this particular proceeding.
22 If you have any questions at any time, feel free to ask.
23 We're just interested in your honest opinions.

24 You have been very forthcoming in the
25 questionnaire. You gave us detailed information. I'll just

1 follow up on a few things in there and talk to you at some
2 length about capital murder and the laws and rules that
3 apply to that type of case and your opinions about that.

4 What types of cases have you sat on in
5 the past? I believe in your questionnaire you said most of
6 them settled before actually you went to deliberations?

7 A. Well, one involved a motor vehicle where a
8 truck had, if I recall the facts, had pulled out in front of
9 this other car and it caused a wreck. Another one was more
10 or less a shut -- an open-and-shut case where this defendant
11 had committed a crime, but he was judged to be mentally
12 incompetent.

13 Q. Okay. So it was kind of an agreed competency
14 hearing?

15 A. Right. The defense and the prosecution both
16 agreed.

17 Q. Okay. And you originally are from Tennessee?

18 A. Right.

19 Q. And I think you said in the questionnaire that
20 you lived there for about 23 years and the rest of the time
21 you have been down here in Texas?

22 A. Yes.

23 Q. What brought you down here to Texas?

24 A. After I got out of the college, I had a job
25 opportunity with Collins Radio in Richardson. And I just

1 came down here for a couple of years.

2 Q. And you have been here ever since?

3 A. I've been here ever since.

4 Q. And you now work out of your home as a
5 financial consultant?

6 A. Right.

7 Q. Let me talk to you, then, about capital
8 murder. You know from what the Judge has told you, this is
9 a capital case in which the State is seeking the death
10 penalty, so we want to speak to every juror how they
11 personally feel about the death penalty laws.

12 On your questionnaire you checked that
13 you are in favor of the death penalty and I would like you
14 to just elaborate on that as to why you favor that law,
15 maybe the purpose you think the death penalty serves
16 society.

17 A. Well, I think there are some individuals who
18 aren't or can't -- the chances of rehabilitating these
19 individuals are low and the crimes that they commit are so
20 horrific that that punishment seems to be warranted in my
21 opinion.

22 Q. Okay. What types of crimes do you personally
23 feel should come into consideration for the death penalty?

24 A. Well, crimes that are premeditated, in
25 particular where they are not -- maybe a crime of passion

1 where someone went out of control temporarily.

2 Q. Okay.

3 A. You know, crimes involving children, the abuse
4 of children, those types of things.

5 Q. Okay. Have you ever followed any cases in the
6 news locally or nationally, some criminal case, a murder
7 case, that you thought might be worthy of a death penalty
8 case or involved the death penalty?

9 A. I really haven't paid that much attention. I
10 mean, I'm aware of this case. I think everybody followed
11 this case for several weeks. But I haven't followed up on
12 -- I know what happened to the other defendants, but I
13 haven't followed that with any kind of regularity.

14 Q. That's kind of my next line of questioning.
15 This case got a lot of publicity when it occurred, a lot of
16 TV coverage, a lot of coverage, obviously, in the
17 newspapers. I would say 99.9 percent of all the jurors that
18 we talked to have heard something about the case, some more
19 than others.

20 The fact that you have read stories or
21 seen stories or followed the case when it occurred, does not
22 make you ineligible to be a juror or unfit. If that were
23 the rule of law, we could never seat jurors in cases like
24 this, obviously. But basically it's this. The jury that
25 sits in this case has to make its decisions just based on

1 the evidence they hear in the courtroom from the witness
2 stand. We can't ask you to blank out or completely forget
3 what you have read or seen on TV. However, you can't use
4 that in your decisionmaking process. You can't let those
5 news stories influence you in your decisionmaking process,
6 because, obviously, the better evidence comes from the
7 witness stand.

8 You probably know and have seen stories
9 and realize that the newspapers and the TV reporters don't
10 get it right all the time when they are reporting these
11 matters. And that's the rule of law. So we ask each juror
12 as best you know yourself, would you be able to follow that
13 rule of law in this case and if you were seated as a juror,
14 would you be able to make your decisions just on what you
15 hear in the courtroom and not let any news stories you have
16 seen or read influence your decisions in any way?

17 A. Yes, I believe I could.

18 Q. Okay. Fair enough. Now, in Texas the death
19 penalty is reserved just for specific types of cases. You
20 mentioned child abuse cases. We have child abuse cases, if
21 the child is not killed, where you can get a life sentence,
22 but you can't get the death penalty. There used to be
23 certain rape cases which were eligible for the death
24 penalty, but now it's just reserved for murder cases and
25 then just certain types of murder cases.

1 You use "premeditated." That's a word
2 that a lot of us use. "Intentional" is the key word under
3 the law. It has to be an intentional killing. They have
4 the intent to kill and they act upon it. It may only take a
5 few seconds to form that intent, but they do that.

6 And it has to be some other aggravating
7 circumstance, for instance, a murder that occurs during the
8 course of another felony, during a robbery. If you go into
9 a 7-Eleven and rob the clerk and you intentionally murder
10 the clerk during the course, that could be a death penalty
11 case. If someone breaks into someone's home and kills
12 someone there in the house, that could be a death penalty
13 case, or during a rape, robbery, or arson.

14 Also specific victims, such as police
15 officers on duty, firemen on duty, can be a death penalty
16 case or murder of a child under the age of six. Murder for
17 hire, someone does it for money or profit and then a serial
18 killer situation or mass murderer where there are several
19 victims. But those are the specific types of cases that
20 have been reserved for consideration of the death penalty.

21 Now, I know I went over that list kind of
22 quickly, but does that list comport or do you agree that
23 those are the types of cases from your personal point of
24 view that should at least be under consideration for the
25 death penalty?

1 A. Yes, that seems reasonable.

2 Q. Okay. Let me go into one other area of the
3 law. We talk about -- the example I gave was robbing a
4 7-Eleven and murdering the clerk. When we think about the
5 death penalty, we generally use that as an example, the
6 actual person who causes the death, the triggerman.

7 However, a capital murder is like any
8 other crime. Sometimes you have more than one person commit
9 a crime. They do it in a group. Some have a greater role
10 than the others, but they are all participating actively in
11 it to carry out the crime.

12 In those situations the law prescribes
13 that everyone, if they are actively participating, can be
14 held accountable and can be found guilty. And the same is
15 true of capital murder. If you have more than one person
16 participating in that crime, but maybe only one person is
17 the triggerman who actually causes the death, but the others
18 assist in it, they can be found guilty under the law.

19 An example we often give is, let's say
20 Mr. Wirsky and I, and we get another accomplice, we decide
21 we want to rob a bank. The plan calls for me to go in with
22 some loaded guns, Mr. Wirsky to have a bag, and the
23 accomplice is going to be our getaway driver. He's going to
24 drive us there, keep the car running, and warn us if the
25 police are coming and give us a quick getaway.

1 We go in and I pull my two guns out. I
2 threaten everyone. Mr. Wirskye starts running through the
3 teller's drawers and grabbing the money. Sometime during
4 the course of that, maybe I don't like the way someone
5 looked at me, maybe Mr. Wirskye says someone is about to go
6 for an alarm, and I shoot them and kill them and we leave.
7 We're arrested.

8 Quite obviously, I have committed capital
9 murder and I could be prosecuted for it and I could
10 ultimately receive the death penalty, depending on how the
11 jury felt about the facts. The law says that since Mr.
12 Wirskye and the getaway driver were actively participating,
13 they, too, could be prosecuted under the capital murder
14 statute and could ultimately, depending on the facts,
15 receive the death penalty.

16 And we ask each juror that comes in here
17 how they feel about that, because we have a lot of jurors
18 that agree with capital murder when it involves the actual
19 triggerman or the person that causes the death. Personally,
20 they would draw a line on the accomplice. They have an
21 objection and would not, if it were up to them, would not
22 give the death penalty or have the death penalty as a
23 consideration for someone who didn't actually cause the
24 death. Other jurors tell us, no, I think an accomplice,
25 depending on his participation and involvement, could be

1 prosecuted and could ultimately receive the death penalty.
2 People just feel differently about it.

3 And I want to ask you, Mr. Evans, how you
4 feel about that, the accomplice or nontriggerman. Do you
5 think that they should be prosecuted in these situations and
6 ultimately could receive the death penalty, depending on the
7 facts?

8 A. I believe they definitely should be prosecuted
9 and I think they, depending on the circumstances, could be
10 eligible for the death penalty.

11 Q. Okay. What factors come to mind when you
12 think of an accomplice situation that would be important to
13 you in determining those types of things?

14 A. I guess the act itself, whether it was
15 intentional or not, some of the factors that you reviewed,
16 if it was during the course of an armed robbery or a
17 situation that could lead to other people being harmed,
18 should they come upon the scene.

19 Q. Okay. Just the type of situation or how the
20 crime was carried out and the potential harm that could be
21 done to people?

22 A. Yes.

23 Q. Okay. The fact that you brought up kind of
24 mirrored exactly what the law is. There's two theories
25 under the law of parties. That's what we call it, the law

1 of the parties. We all know it as accomplice. But they
2 named it the law of parties, if you are a party to an
3 offense.

4 One is if you actively participate,
5 encourage, aid, in committing a crime, then you could be
6 found guilty, if you are not the actual triggerman.

7 The other is this, it's called under the
8 law of conspiracy. And they are very similar. If we
9 conspire to commit one felony, in this case Mr. Wirskye and
10 I agreed to commit a bank robbery, and during the course of
11 carrying out that crime, one of us in the conspiracy commits
12 another felony in the furtherance of it, and in this case I
13 shot one of the tellers to get away or whatever reason, then
14 we can all be held accountable, if the accomplice should
15 have anticipated that that could occur.

16 In other words, similar to what you said,
17 there are circumstances where you should have foreseen
18 somebody would get hurt in that situation, which I think is
19 kind of a common sense point of view, I guess, when you are
20 talking about aggravated robbery and that sort of thing.
21 And that's what we have to prove to get a guilty.

22 Now, in the punishment phase we have
23 these questions and we'll get to those in a minute. But
24 basically if you find someone guilty under the law of
25 parties or as the person that actually caused the death, the

1 trial is not over. You move to the punishment phase.

2 Then the State has to prove that the
3 defendant would be a continuing danger to society and then,
4 if it's a situation involving a nontriggerman, we have to
5 prove that he did anticipate a death would occur or intended
6 someone to die, again using the same types of evidence.

7 And then, finally, the last question is,
8 is there sufficient mitigating evidence where a life
9 sentence should be imposed rather than the death sentence?
10 But if those questions are answered yes, yes, and no, the
11 Judge would sentence the defendant to death. If they are
12 answered any other way, he would sentence the defendant to
13 life. And those are the only two possible outcomes once
14 someone has been found guilty. Is that clear?

15 A. Yes.

16 Q. And I want to lay all our cards on the table.
17 We can't go into the facts, obviously, of this specific
18 case, but we are prosecuting this case under the law of
19 parties. We are prosecuting the defendant as an accomplice,
20 as a nontriggerman.

21 And I take it from your previous answers
22 that you would agree with the law that a person can be
23 prosecuted under that law and if there are sufficient facts
24 proven to you, you could actually assess the death sentence
25 in those situations?

1 A. Yes.

2 Q. Okay. Now, I've gone over the procedures of
3 how the trial is set up into two portions, the
4 guilt/innocence stage and then the punishment stage. How
5 the answers play out, the defendant being sentenced to
6 death, and I believe living in Texas these past years, you
7 are probably familiar with the method of execution in Texas

8 --

9 A. Yeah.

10 Q. -- being lethal injection. And you are also
11 probably aware that in Texas these executions actually do
12 take place. You know, there are some states where it's on
13 the books, people are on death row, but they are never
14 carried out. But in Texas, it is. Texas leads the nation
15 in executions. And so I think it's different in Texas. A
16 juror fully realizes that once he's called down here and
17 going through this process, this is the sentence, if the
18 defendant is found guilty, if those questions are answered,
19 and he is sentenced to death, that someday down the line
20 that sentence will actually be carried out.

21 You look like from your questionnaire and
22 listening to you talk, you are a reflective man. I'm sure
23 you have thought about this a little more since you found
24 out what type of case it was. How would you feel about
25 sitting on a case and judging another human being, knowing

1 that if the State can disprove these things to you and you
2 were called on to answer these questions, would you feel you
3 could answer them knowing that the defendant you see in the
4 courtroom every day could be executed someday?

5 A. Well, as to how I would feel about it, I think
6 it's an awesome responsibility. I hope I don't get on it,
7 but I think that I could do -- I think that I could do the
8 job.

9 Q. Okay. Most people feel that way. They
10 realize it is an awesome responsibility. None of them want
11 to be on it, actually. The few people over the years that
12 I've talked to in these situations that do want to be on it,
13 never make it on the jury. We usually have a problem with
14 them.

15 But you feel that if you were chosen,
16 that you could make that decision?

17 A. Yes.

18 Q. Okay. Now, let's look at Special Issue No. 1.
19 If you would read that to yourself just for a moment and I
20 want to go over a few things.

21 A. (Prospective juror complies.)

22 Q. That question, as you can see, asks the jurors
23 to make a prediction about how the defendant will behave in
24 the future, whether he would be a continuing danger.

25 Let me ask you first, do you feel that

1 you could answer that question about how he will behave, if
2 you are given enough information and enough facts?

3 A. I think so. Past behavior is one of the best
4 predictors of future behavior, I believe.

5 Q. That's what most jurors tell us. And I can
6 tell you in this portion of the trial, if there is a pattern
7 or if there have been other crimes committed, you will get
8 to hear about that. You will get to hear from witnesses.
9 You can hear bad things and you can hear good things in that
10 person's past.

11 And also, obviously, you will get to
12 consider what you heard in the guilt/innocence stage about
13 their role in the crime and also plug that in and consider
14 that.

15 Under the law it starts out with a no
16 answer and the State must prove to you that it should be
17 answered yes. We have to prove that to you beyond a
18 reasonable doubt. We do that by putting on any new evidence
19 about the person's past that we may have available and also
20 by arguing and you deliberating and considering the evidence
21 of the crime itself to determine if we have proven that to
22 you beyond a reasonable doubt.

23 The fact that you found him guilty of
24 capital murder beyond a reasonable doubt does not mean you
25 answer that question yes. We have some jurors that will

1 tell us that's all I need and it's going to be a yes and I'm
2 not going to think about it anymore. The law contemplates
3 that jurors will not give an automatic answer. There would
4 be no reason to have the questions, if that were true.

5 It requires the jurors to wait and listen
6 to the additional evidence that might be brought forth in
7 the punishment phase and then go back to the jury room and
8 deliberate and decide if the State has actually proven its
9 case beyond a reasonable doubt.

10 Do you feel that you could follow that
11 rule of law and require the State to prove that to you
12 beyond a reasonable doubt?

13 A. Yes.

14 Q. Okay. Now, the words in these questions, you
15 are not going to get legal definitions. The definitions
16 will be left up to you and the other jurors, just your
17 common usage of them. So I want to go over a few of the
18 words in these questions.

19 We have to prove in 1 whether there is a
20 probability that the defendant would commit criminal acts of
21 violence. When you see "probability" in that sentence, what
22 does "probability" mean to you?

23 A. Well, it means chance. What are the odds, you
24 know.

25 Q. We've gotten a little bit of guidance from the

1 Court and it's this, "probability" does not mean a
2 certainty. I don't think that we could ever prove to
3 anyone's mind an actual certainty, obviously, about
4 something that's going to happen. And it's more than a
5 possibility. Because if it were a possibility, our burden
6 of proof would be pretty low, because anything is possible.
7 More likely than not is the term we hear most often. A lot
8 of jurors have told us greater than 50 percent, more likely
9 than not, that sort of thing, when they look at probability.
10 We've had all kinds of answers.

11 Does that -- are you comfortable with
12 that type of the parameters of more likely than not, more
13 than a possibility?

14 A. Yes.

15 Q. Okay. We have to prove to you that he would
16 commit criminal acts of violence. When you see "criminal
17 acts of violence" there, what types of crimes come to mind?

18 A. Well, murder, rape, assault.

19 Q. Okay. Any type of violence to another human
20 being? And finally, we have to prove he would constitute a
21 continuing threat to society. What does "society" mean to
22 you in terms of that question?

23 A. Um, society, well, that's us in this room. I
24 mean, it's the general population, if you will.

25 Q. Okay. Could it be the potential of coming

1 into contact with anyone, how he might react to these people
2 on the street or anywhere he might be, as well as the prison
3 system, administrators, inmates, people that work there,
4 guards, teachers, that sort of thing?

5 A. Yes.

6 Q. Okay. This question, as I said before, starts
7 out with a no and we have to prove to you it should be
8 answered yes. And if we do, you go on to the second
9 question.

10 The second question also starts out with
11 that no answer and the State has to prove to you beyond a
12 reasonable doubt it should be answered yes. Again, you use
13 the evidence from the guilt/innocence stage about their role
14 and also any additional information that you have learned
15 about the person in the punishment stage.

16 That's the party question, the accomplice
17 question. It asks whether the defendant actually caused the
18 death of the deceased. Now, if you believe the evidence
19 shows he's the actual triggerman or caused the death, then
20 that part of the question is pretty simple. But the second
21 part asks did not actually cause the death of the deceased,
22 but intended to kill the deceased, that is, their intention
23 was there. Maybe another accomplice did that, or another
24 person, or anticipated that a human life would be taken.

25 And that goes back to the first question

1 where we have to first prove in the guilt/innocence stage
2 where he should have anticipated. And here the evidence is
3 just a little different in that he did anticipate. Again,
4 kind of what you said, look at how the crime was planned,
5 how it was pulled off, and their role in it, those sorts of
6 things.

7 We can't get into a person's mind and
8 open it up and say, here's what his intentions were. But
9 what we can do is put on all the relevant evidence and the
10 jurors can draw conclusions, use their common sense, and
11 draw reasonable deductions from a person's intent, from
12 their actions, and what happened in the crime. Does that
13 make sense to you?

14 A. Yes.

15 Q. Do you feel that you can answer that question
16 based on all the evidence that would be submitted to you?

17 A. Yes.

18 Q. The fact that you have found the defendant
19 guilty in the guilt/innocence stage beyond a reasonable
20 doubt, doesn't mean you would answer, obviously, question
21 No. 1 yes or question No. 2 yes. You have to look at each
22 of those issues separately and then make your decision. You
23 could do that?

24 A. I understand.

25 Q. Then the last Special Issue is a little

1 different in that there's no burden of proof. The State is
2 not required to prove to you beyond a reasonable doubt it
3 should be answered yes. The defense is not required to
4 prove to you that it should be answered no. It gets a
5 little lengthy. It asks, whether taking into consideration
6 all the evidence, including the circumstances of the
7 offense, the defendant's character and background, and the
8 personal, moral culpability of the defendant, there's
9 sufficient mitigating circumstance or circumstances to
10 warrant that a sentence of life in prison, rather than a
11 death sentence, be imposed.

12 We sometimes call this the safety net,
13 catch-all, the safety valve. It allows a juror to, even
14 though they found someone guilty, even though they believe
15 he's dangerous and has anticipated a life would be taken, it
16 allows them to show mercy, if they believe in their hearts
17 and minds that that's the right thing to do in a case, if
18 they think there is sufficient mitigating evidence that a
19 life sentence should be imposed rather than the death
20 sentence.

21 He doesn't get off scot-free, obviously,
22 he has to serve a life sentence. But it's something that --
23 I can't tell you what mitigating evidence would be. It's up
24 to you and the other jurors. And as you sit there today,
25 you are not required under the law to tell us what you think

1 mitigating evidence is. All you are required to do is tell
2 the Court, I can keep my mind open to it and if I think
3 something is sufficiently mitigating, I'll give it that
4 weight. But if I think it's enough in my heart where I
5 believe it's a life sentence, I'll answer it that way. And
6 if I don't, I'll answer it no. Do you feel that you could
7 do that?

8 A. Yes.

9 Q. As you sit there, today -- you are not
10 required to do this. But I like to measure someone's gut
11 reaction. Does anything come to mind as potentially
12 mitigating? Any type of evidence that you can think of?

13 A. Well, the one that comes to mind is if, you
14 know, if someone maybe had a low IQ or something like that,
15 maybe wasn't fully capable of understanding the
16 circumstances they found themselves in or, you know, maybe
17 --

18 Q. That's a good example. It's kind of how that
19 question first came about. The person had a mental defect.
20 They were somewhat retarded. It was kind of argued about
21 how much, but there was no argument that he was slow, and
22 the fact there was argument, that that is what actually made
23 him dangerous. And we didn't have that question the first
24 time he was prosecuted.

25 The Court said, well, they could use that

1 evidence, it's not his fault, to find him dangerous, but
2 there's not a mechanism for the jury to find that as
3 mitigating. So that's how we came up with the question.

4 But it's a good example in that it could
5 be someone is slower, maybe they just follow along and they
6 were influenced or something. Knew right from wrong, but
7 could be influenced that way. We hear all kinds of things
8 from jurors and, again, they don't even have to agree among
9 each other. They just have to be able to look at it.

10 Sometimes you hear about a person's
11 background. Maybe they were raised in a bad home. Maybe
12 they were beaten. Maybe they were physically abused. Maybe
13 they were mentally abused. But some jurors think that could
14 be mitigating, I guess, depending on the severity.

15 Other jurors tell us, I feel bad for
16 them, but once you reach adulthood and you are past that,
17 you have to be held accountable. That can't be an excuse.
18 Does that kind of background information, you feel one way
19 or the other about that?

20 A. Well, I feel when you get to be an adult, you
21 have to put those things behind you and move on.

22 Q. Again, you gave a good example. Another
23 example, I think, is the Yates' case, which you mentioned,
24 the woman accused in the murder of her children, drowned,
25 got a lot of press coverage. She was found guilty, but,

1 obviously, she had some mental problems. And I think the
2 jury pretty quickly found that to be mitigating and she was
3 given that life sentence. Could be some mental background
4 like that, that sort of thing.

5 It's just anything that might come out of
6 the person's background that you view that the right thing
7 to do is give a life sentence. And I think you have told
8 the Court that you can do that, even though you found those
9 other things. You could keep your mind open there?

10 A. Yes.

11 Q. Okay. Now, many times in these types of cases
12 psychiatrists or psychologists are called. The defense may
13 call someone to give an opinion about the future danger or
14 oftentimes they may call some mitigation expert that might
15 tell you their opinions as to whether something is
16 mitigating or a reason why someone may act this way. The
17 State may have these types of experts, too.

18 People feel differently about those
19 experts. We have some people that really like them and
20 respect them and would put a whole lot of faith or stock in
21 those opinions. We have other jurors who take the opposite
22 view, actually. They say, you know, you can probably find
23 one of those guys to say what you want, if you look hard
24 enough or pay them enough money. It really wouldn't matter
25 to me. And you have other jurors who kind of put them in

1 with any other witness. They wouldn't necessarily give them
2 any greater weight. They will use that and look at it as
3 another piece of the pie, if you will, look at that along
4 with the offense and anything in their past and then make
5 their decision.

6 Do those types of experts hold any
7 particular weight with you one way or the other or do you
8 view them like any other witness?

9 A. I think I would view them like any other
10 witness in that I think you can find people to say just
11 about anything.

12 Q. But you would be open to it like any other
13 witness and wouldn't --

14 A. Of course.

15 Q. -- give greater weight at the beginning? You
16 would just have to wait and hear about it? Okay. Let me go
17 over a few rules that apply in every criminal case.

18 One is the presumption of innocence. The
19 fact that someone has been charged or arrested or been
20 indicted or even that we are going through this jury
21 selection process, is no evidence of his guilt. The law is
22 that a person begins a case being presumed with that
23 presumption of innocence. And that's how you have to start
24 the defendant off. And then the State is required to prove
25 to you beyond a reasonable doubt with the witnesses and the

1 evidence that it should be answered yes.

2 Can you follow that rule of law and give
3 the defendant his presumption of innocence?

4 A. Yes.

5 Q. Okay. The burden of proof is on this table
6 and it never leaves. We have to prove our case beyond a
7 reasonable doubt and it never shifts to the defense. Their
8 only obligation under the law, technically, is to show up.
9 They don't have to ask a question. They don't have to make
10 an argument. They don't have to make an objection. They
11 don't have to put on witnesses. I anticipate that they will
12 ask questions, obviously, and do their job, but they don't
13 have to, because that burden of proof never leaves here and
14 you can't require them to prove anything to you.

15 If they don't say a word and at the close
16 of the evidence you have a reasonable doubt based on what we
17 put forth, then you simply find the defendant not guilty. I
18 take it you can follow that rule of law?

19 A. Yes.

20 Q. The burden of proof goes to every element of
21 the indictment. We have to prove each and every portion of
22 that indictment to you beyond a reasonable doubt. And if we
23 fail on any portion, you are obligated to find the defendant
24 not guilty.

25 Let me give you a couple of quick

1 examples. An easy one is the identity. We have to prove
2 who committed this crime and at the close of the evidence,
3 if you have a reasonable doubt about that, you would find
4 him not guilty.

5 We also have to prove to you where it
6 happened, in Dallas County. We may prove to you in your
7 mind beyond a reasonable doubt who did the killing, where,
8 how, when, who the victim was, but we may not prove up that
9 Dallas County element. Maybe the evidence showed it
10 happened in Tarrant County.

11 Now, that would be very poor preparation
12 on our part, obviously, and, again, I don't anticipate that
13 happening. But if you have a reasonable doubt, even about
14 the county, you would be obligated under the law to find him
15 not guilty. You would probably have us fired for,
16 obviously, doing such a poor job, but you couldn't help us
17 out and give us a leg up. And I just use that as an example
18 to demonstrate how it goes to every portion.

19 Do you feel that you can follow that rule
20 of law and require us to prove every portion of the
21 indictment?

22 A. Yes.

23 Q. Okay. Now, the Fifth Amendment applies in
24 every criminal case, if a defendant does not testify. If he
25 wants to testify, no one can stop him and he's judged just

1 like any other witness. If he chooses not to testify, the
2 Court will instruct you that you can't hold that against him
3 and use that as evidence against him and consider it in any
4 way.

5 There could be numerous reasons why
6 someone chooses not to testify. They may make a poor
7 witness. They may not be educated. They may not perform
8 well and they look guilty when they're not. And they could
9 simply be following their lawyer's advice. And the jury
10 would simply be instructed not to consider that. And could
11 you follow that rule of law?

12 A. Yes.

13 Q. Police officers often testify. Most jurors
14 have a great deal of respect for the job they do. And being
15 a criminal case, you will see a lot of them. But you can't
16 give them a leg up over the other witnesses ahead of time.
17 You have to start them out the same as you would any other
18 witness and then judge their credibility once they are on
19 the witness stand. They are, obviously, like any other
20 profession, you are going to have some good ones and have
21 some bad ones, and you have to wait and make your decisions
22 once you hear. Would you be able to follow that rule of
23 law?

24 A. Yes.

25 Q. And then, finally, you may hear about the

1 parole laws or you have read about them. They get stirred
2 up in the news sometimes. The Judge would instruct you that
3 in a capital case anyone found guilty of capital murder and
4 gets a capital life sentence, they have to serve forty
5 calendar years before they become eligible for parole. He
6 would also instruct you that you can't consider the parole
7 laws in any shape or form in making your decision. You just
8 have to consider a life sentence a life sentence. Could you
9 follow that rule of law?

10 A. Yes.

11 Q. Okay.

12 MR. SHOOK: Could I have one moment,
13 Judge?

14 THE COURT: Yes.

15 Q. (By Mr. Shook) There's one other area I
16 forgot to go over. Sometimes juries find defendants guilty
17 of what we call lesser included offenses. And one of the
18 lesser included offenses of capital murder is aggravated
19 robbery, robbing someone with a gun or a deadly weapon.

20 If you found -- if you had a reasonable
21 doubt about the murder, you may find him guilty of
22 aggravated robbery and in that situation the penalty range
23 goes from life to 99 years at the maximum all the way down
24 to five years in prison and anywhere in between, 20 years,
25 50 years, 70 years.

1 What a jury has to do is wait until the
2 punishment phase, listen to all the background evidence,
3 good and bad, then make their decision as to what they think
4 is the proper range of punishment, a life sentence, or as
5 little as five years in prison, depending on the facts and
6 anywhere in between and, again, you have to wait and make
7 that decision.

8 Could you keep your mind open to that
9 full range and then make your decision, either the maximum,
10 minimum, or whatever you thought in between, just depending
11 on the facts of the case?

12 A. Yes.

13 Q. Okay. I notice like a lot of jurors that you
14 watch "The Practice." That always concerns us as lawyers,
15 obviously, because I think "The Practice" is the one where
16 the prosecutors never really are on the ball. And we're
17 crooked or taking bribes or something.

18 A. And it's over in an hour, too.

19 Q. And all wrapped up. The other big show people
20 watch is "CSI", I think. I don't know if you have seen
21 that, but as a prosecutor I know we wish that the police
22 were that effective and could find that type of stuff. They
23 are good, but they are not nearly as good as that show. And
24 I'm always afraid jurors will do that, might hold us to that
25 burden, but I don't think that you are that type of person.

1 Do you have any questions over anything
2 I've gone over? I've covered a lot of area here, but
3 hopefully it hasn't been too confusing.

4 A. No. I think I understood the questions and
5 the law to the extent that it's been explained today.

6 Q. Okay. Well, Mr. Evans, I appreciate your
7 patience. I think you have told us that you are the type of
8 person that can make these decisions. You really wouldn't
9 want to be here, I don't think. I don't think anyone would.
10 But if you are called upon, you can make these decisions, if
11 these issues are proven to you and you can keep your mind
12 open and listen to everything and then render what you think
13 is a just decision in this case based on the evidence?

14 A. Yes.

15 MR. SHOOK: That's all I have, then,
16 Judge.

17 CROSS-EXAMINATION

18 BY MR. SANCHEZ:

19 Q. Good afternoon, how are you doing?

20 A. Good.

21 Q. My name is Juan Sanchez. I'm going to ask you
22 some questions and I'll get to know you a little better.
23 You didn't get to speak a lot when you were answering the
24 questions, yes or no answer, but just to get to know you a
25 little better.

1 You are from -- is it you were born in
2 Maryville, Tennessee? Where in Tennessee is that?

3 A. It's about 16 miles south of Knoxville.

4 Q. Okay.

5 A. It's near Gatlinburg, if you have ever been to
6 the Great Smokies.

7 Q. The only place I've been to is Nashville.

8 A. Really no comparison.

9 Q. No comparison. Much nicer in Maryville?

10 A. Right.

11 Q. A lot of Tennessee fans, University of
12 Tennessee. Is that Knoxville?

13 A. Right.

14 Q. Also, I notice that your father was a boiler
15 maker. Is that what it said in here?

16 A. Yes.

17 Q. That's funny because we just had a boiler
18 inspector this morning, so it's a boiler day. And I notice
19 that your -- one of your sons or is it your only son is in
20 the military?

21 A. I have two sons. The oldest is in the Navy.

22 Q. Is he in active duty right now?

23 A. Yeah. He's in Norfolk, Virginia.

24 Q. He's not overseas anywhere?

25 A. No.

1 Q. Is there a possibility that may happen?

2 A. No. He has a new top secret assignment and
3 they actually flew him off his ship. He was on his way to
4 Iraq and they flew him off by helicopter to go to his new
5 assignment, so --

6 Q. He couldn't tell you about that?

7 A. No. Loose lips sink ships.

8 Q. And I also notice, is it Jamie? She's a
9 talent scout?

10 A. Yes, for Warner Brothers.

11 Q. Really?

12 A. She finds bands, musical bands.

13 Q. She works here in Texas or --

14 A. Yes, she lives in Dallas.

15 Q. Sounds pretty interesting.

16 A. It is.

17 Q. Has she discovered anybody we know about?

18 A. She is still working, so she hasn't found that
19 one artist that she needs to retire.

20 Q. That one. Okay.

21 A. Just takes one.

22 Q. I just wanted to ask you that. I found that
23 curious. When we read the questionnaires, there's always a
24 million questions we want to ask people. But since we have
25 a little bit of time, but I'm not going to take more time

1 than that.

2 As you know, the day that you came down
3 to fill this out, you saw a lot of people there, didn't you?
4 Lots of people?

5 A. Yes.

6 Q. And of all those people, we only picked out a
7 certain amount of questionnaires that we actually looked at.
8 And --

9 A. I'm sorry to hear that.

10 Q. And so just to make you feel good or bad, I
11 don't know how you are going to feel, you made the cut to
12 come down here and talk to us. As I said, sitting on this
13 side of the table we want to make sure that somebody who is
14 going to end up on the jury is going to have an open mind
15 and is going to be fair and also is going to tell us really
16 how they feel about certain things when it concerns the law..

17 I think that we can all say somebody
18 gives a proposition, can you follow that law, nobody wants
19 to say they can't. And you can always say you can follow
20 the law. But in reality, sometimes people get over there in
21 the comfortable chairs and they say, well, I know that I can
22 follow the law, but I'm having a problem with it right now.
23 And we don't want to put people in that situation, you know,
24 where there's going to be a crisis in their own mind that
25 they want to be fair and follow the law, but something -- or

1 the way they think or something has happened to them, they
2 may not be able to at that point. And once you make it onto
3 the jury, it's too late.

4 So that's why we have this process here
5 where you can tell us if there is something that you may not
6 be comfortable with and that may play into your
7 decisionmaking. Okay?

8 You talked about the fact that you were
9 aware of some media coverage in this case and you told
10 Mr. Shook that you could put that out of your mind and
11 decide the case based on what you hear in this courtroom.
12 But even though you can do that, have you formed any
13 opinions as to this case?

14 A. I was really trying not to think about it. I
15 haven't sought any information about what's happened to the
16 other defendants or anything like that.

17 Q. Have you formed any opinion as to how
18 something may have happened or not happened?

19 A. You know, when I say "follow it", I just mean
20 that I know they escaped, I know they visited at a store
21 over in Irving, and I know they were captured in Colorado.
22 And that's the extent of the information that I know.

23 Q. Okay. You didn't do any reading on it or --

24 A. No.

25 Q. -- looking on the Internet or anything like

1 that?

2 A. No.

3 Q. But the one thing I did notice in your
4 questionnaire was at the very end you said that when asked
5 how you felt about being chosen, you said you would rather
6 not, but I would do a good job if I was. And you told us
7 earlier, also, that it would be an awesome responsibility.
8 Is that the only reason that you would rather not be chosen
9 as a juror or is there something more to that? Is it just
10 the responsibility alone or somehow another reason why you
11 would be more comfortable sitting on a different type of
12 case?

13 A. What is your question, again? I'm sorry.

14 Q. You mentioned earlier that you thought it was
15 an awesome responsibility.

16 A. Yes.

17 Q. And that was the reason why you may not want
18 to sit on this jury.

19 A. Yes.

20 Q. Is that the only reason or is there more to
21 that?

22 A. Well, sitting in judgment of another human
23 being which could result in his death is not something that
24 I look forward to.

25 Q. And would that play in your mind when you are

1 sitting over there listening to the evidence and maybe
2 having to decide the questions that are presented to you?
3 Would that play some part in your mind having that
4 responsibility? Would it make it -- at that point make you
5 not want to be part of the process at all?

6 A. Well, I probably would not want to be. I
7 would probably not welcome being part of the process, but I
8 believe, if I was chosen -- why am I arguing?

9 Q. You have no choice, you know, sometimes we get
10 jurors that tell us, you know, because morally I may have a
11 problem with it.

12 A. I believe in mercy, you know, and -- but I
13 also believe that we have to have laws to function in this
14 society. You know, I'm a left brain person. You know, my
15 undergraduate is in electrical engineering, so I don't know
16 if logical people go into engineering or if engineering
17 makes you a logical thinker. But, you know, I, you know, my
18 wife -- she always makes emotional decisions, you know, so
19 she and I are a good team. But I'm a more logical person,
20 if that helps you in any way.

21 Q. So you wouldn't have -- I notice that you are
22 a very religious person --

23 A. Yes.

24 Q. -- like a lot of people that come in here and
25 those people sometimes have a problem being on this type of

1 jury because they don't want to be a part of a process that
2 may end up in a man's death based on their Biblical --

3 A. They must not have read the Old Testament.

4 Q. That's what I want to know from you. Would
5 that in any way be a problem?

6 A. I don't think so.

7 Q. You just said that you believe in mercy. What
8 do you mean by that? Can you expound on that a little bit?

9 A. Well, you know, we're all sinners, you know.
10 And but for the grace of God go I. So -- I believe in
11 mercy, you know.

12 Q. Okay. Let me talk to you a little bit about
13 the death penalty and the law. It was explained very well
14 by Mr. Shook. But, as you can see, and not all cases are
15 eligible for the death penalty or the State seeks the death
16 penalty. I mean, it's only murder cases and then only
17 certain types of murder cases are eligible for the death
18 penalty, and even capital murders, not all of them are to be
19 assessed the death penalty, unless these certain issues here
20 are answered the way the State explained to you.

21 So you can see the law favors that the
22 death penalty not be given in every single case and only
23 certain types of cases, and not even those cases, not only
24 until they met their burden on the questions, or as
25 sometimes we like to say, the State has jumped over those

1 hurdles in order to have the juror sign the answers the way
2 they would ask them to.

3 And as you can see, I mean, basically the
4 law does not favor the death penalty, unless they have met
5 their burden. Does that make sense to you?

6 A. Yes.

7 Q. You indicated when the State was asking you
8 questions that you thought past behavior was -- would tell
9 you what somebody would do in the future or was a good
10 indicator of future behavior; is that correct?

11 A. Yes. We were talking about probability of how
12 someone might act in the future.

13 Q. And when you are asking that Special Issue No.
14 1, of course, in your mind, if you get to that Special Issue
15 No. 1, you would already have found that person guilty of
16 capital murder. In other words, you don't get to those
17 questions unless you find the person guilty of capital
18 murder.

19 Would the fact that you already know that
20 in your mind, would that lead you in Special Issue No. 1 to
21 automatically find him to be a continuing threat to society?
22 In other words, would that question already be answered yes
23 in your mind based on the fact that you found him guilty of
24 capital murder in the first part of the trial?

25 A. No, I don't think so. I think they would be

1 -- there would be some additional weighing of other evidence
2 or past behavior beyond this issue would be my expectation
3 there.

4 Q. So you would wait, even though you found him
5 guilty of capital murder, you would wait and have the State
6 prove that Special Issue to you beyond a reasonable doubt?

7 A. Yes. It says probability of committing
8 criminal acts of violence, you know. So, I mean, he may run
9 a stop sign, but that doesn't mean that he's going to turn
10 into a serial killer.

11 Q. The reason I ask that question, because, like
12 I said, there are some jurors they find not much value in
13 that question because they say, look, I've already found him
14 guilty of capital murder. What more do I need? I'm already
15 going to answer that yes before we get to it. Do you find
16 yourself in that situation or is it possible?

17 A. Anything is possible, you know. But I don't
18 think that's the intent of the question --

19 Q. You would be able to stop yourself and
20 basically start anew on that question No. 1 and
21 independently answer it regardless of what your verdict was
22 in the first part of the trial?

23 A. Yes, I believe so.

24 Q. Now, question No. 2 has to do with intent and
25 also with parties. You as a juror on a jury is going to

1 have to determine what somebody's intent was and what they
2 anticipated when certain things were happening. And I know
3 the State, like I say, couldn't get into somebody's head.
4 You have to infer from their acts and things like that.

5 But sometimes we have jurors who say, for
6 me to answer that question or for me to say that that person
7 didn't anticipate that a life would be taken, I may need to
8 hear from that person and they have to tell me what they
9 were actually thinking when things were happening. How do
10 you feel about that?

11 A. Well, I sort of feel if you are -- and this
12 may get me off the jury -- but I sort of feel that if you
13 are with a group of people and you have a weapon and you go
14 in to rob somebody, then there's a pretty good chance that
15 somebody is going to get hurt. That's the way I honestly
16 feel about that.

17 Q. And just to follow up on that, though, in
18 order for you to answer that question no, would you have to
19 have -- would you have to hear from the defendant, from Mr.
20 Murphy, as to what his actual thoughts were or whether he
21 actually anticipated that a human life would be taken?

22 A. Well, it might be a good idea for him to share
23 that information in order that we have the best outlook that
24 we can on question No. 2. But you know, as we said, we
25 can't make him testify.

1 Q. And if he didn't get up and tell you those
2 things, would somehow in your mind that be -- I don't want
3 to say a point against him, but somehow tell you something
4 or are you going to answer the question --

5 A. No.

6 Q. -- not in his favor?

7 A. No. There's a lot -- I watch "The Practice"
8 enough to -- and there's a lot of reasons that you don't
9 have the defendants testify.

10 Q. Okay.

11 A. But it might be, I mean, if he had something
12 good to say about that, then maybe that would be a good idea
13 for him to share it with us. It might be to his benefit,
14 you know.

15 Q. But you wouldn't require it?

16 A. No.

17 Q. And you could answer that question no, if the
18 State hadn't proved that to you beyond a reasonable doubt?

19 A. Yes.

20 Q. Okay. Question No. 3 talks about mercy. I
21 guess mercy in a way like you talked about, the mitigation
22 question, basically. Can you see value in that Special
23 Issue No. 3, that last --

24 A. Oh, definitely.

25 Q. What value do you see in that?

1 A. I mean, as it says, there may be some special
2 or mitigating circumstances where the person, you know, and
3 we talked about some maybe -- maybe they didn't have a high
4 enough IQ or maybe they legitimately did go through some
5 things in their childhood that they just couldn't -- that it
6 wasn't reasonable for someone to overcome, you know, that
7 set them down this path, you know.

8 Q. So you can see how and, I guess, like we said,
9 you have that question there as a safety net.

10 A. Right.

11 Q. Because you could see -- we've had jurors that
12 say, you know, I don't want to say they work themselves into
13 a frenzy, but we convicted him of capital murder and we
14 already found him guilty of that, it's been proven to us.
15 It's been proven to us that he's a continued threat to
16 society, and they have proven that to us, and we said yes.
17 And they have proven to us that he anticipated that a human
18 life would be taken. Why are we even dealing with Special
19 Issue No. 3?

20 Are you going to be able to step back and
21 really consider that question after you have got that far in
22 the process?

23 A. Yes. I mean, this is life versus the death
24 penalty question. I mean, that's what No. 3 is. I mean,
25 all of those, I mean, those three questions. Do I

1 understand that, right?

2 Q. Yes. And if you found some mitigating factor,
3 something about the offense itself, something in his
4 background, something that you yourself thought was
5 mitigating, you would be able to answer that question yes --

6 A. Yes.

7 Q. -- and impose -- an automatic life sentence
8 would be imposed?

9 A. Yes.

10 Q. Okay. Now, you have seen that it's been
11 alleged in this case a killing of a police officer. There's
12 some people that say, you know, I can consider Special Issue
13 No. 3, you know, somebody goes into a convenience store,
14 robbing it, and kills the person behind the counter, and
15 maybe he needed money or grew up in a bad house, something
16 like that.

17 But when it comes to taking the life of a
18 police officer, Special Issue No. 3, there's really nothing
19 ever that could mitigate that situation or I couldn't find
20 anything mitigating in that situation. Would that make a
21 difference to you?

22 A. I had not had that thought.

23 Q. So it wouldn't make a difference to you?

24 A. No.

25 Q. I just want to follow up on something.

1 Correct me if I'm wrong, you told us that if you found him
2 guilty of capital murder, if you found -- you gave a
3 situation where somebody goes in there with guns, that they
4 may have already -- they should have anticipated that a life
5 could be taken. Did I misquote you on that?

6 A. Well, no. I don't think you misquoted me.
7 Paraphrasing. I think I said something very close to that.

8 Q. Okay. If you found that in the first part of
9 the trial, that that's what happened, would that Special
10 Issue No. 2 already be answered for you? Would the State
11 have to prove anything other than what they have proven in
12 the guilt/innocence stage of the trial?

13 A. Well, I guess I would anticipate there would
14 be some testimony as to this person's role in all of this
15 and whether he was more or less along for the ride or
16 whether he was an active participant, planner, just, you
17 know, how much of a co-conspirator, you know, was he in all
18 of this. And that would weigh into it, I think, question
19 No. 2.

20 Q. So would question No. 2 in your mind be
21 basically answered that he did anticipate before you even
22 got to it?

23 A. I'm sorry, say that again?

24 Q. Would question No. 2 or the fact that they had
25 to prove that he anticipated a human life would be taken,

1 would that already be answered in your mind before you even
2 started deliberating on that issue?

3 A. No, I don't think so. I mean -- I would have
4 to go back and read the definitions here of capital murder.
5 But, you know, this is in the sentencing phase, you know,
6 and you wipe the slate clean and they have to prove that
7 this is a yes. I mean, they have to prove that, right?

8 Q. Okay. I wanted to make sure we're on the same
9 page. And just basically you had talked about the fact
10 that, or you had written in your questionnaire, that you had
11 followed the Houston case, the mother with her children.
12 And your answer, I think, was that you gave an opinion, did
13 you form an opinion as to something about that case, and you
14 wrote she had a mental problem -- did you form any opinion
15 on page 7 of your questionnaire.

16 Have you been interested in the outcome
17 of a criminal case, either personally or through the media,
18 and you were interested in the Houston case.

19 A. Yes.

20 Q. And it said, did you form an opinion as a
21 result of that interest and you wrote she was mentally ill
22 at the time. Did you form the opinion that she was mentally
23 ill or did you think she may have been not guilty of it
24 because of her illness or what did you think about that?

25 A. You know, now it's not clear to me when I

1 formed that opinion, whether it was after, you know, the
2 trial or before the trial, you know. People that do that
3 sort of thing have to have some defect, you know.

4 Q. Did you agree with the outcome of that -- of
5 that trial?

6 A. Which was life, life sentence?

7 Q. Do you think that was a little harsh or did
8 you think that was just right or not enough?

9 A. You know, I just don't have enough information
10 to really judge what the jury did there, you know, I didn't
11 follow it that closely.

12 Q. Did you kind of feel sorry for her in her
13 situation or --

14 A. Well, yes, I think so.

15 MR. SANCHEZ: I have no further
16 questions.

17 THE COURT: Thank you, sir. Wait for us
18 outside and we'll have you back in just a few minutes.

19 [Prospective juror out]

20 THE COURT: What says the State?

21 MR. SHOOK: State has no challenges for
22 cause.

23 MR. SANCHEZ: We have no challenge for
24 cause.

25 THE COURT: What says the State?

1 MR. SHOOK: The State accepts the juror.

2 MS. BUSBEE: We would like to have a
3 moment, please.

4 THE COURT: Would you like to step into
5 your office?

6 MS. BUSBEE: Yes.

7 (Recess)

8 THE COURT: Mr. Sanchez?

9 MR. SANCHEZ: We accept the juror.

10 THE COURT: Juror No. 1159 shall be
11 accepted. Ask him to come back in, please.

12 [Prospective juror in]

13 THE COURT: Mr. Evans?

14 PROSPECTIVE JUROR: Yes.

15 THE COURT: I don't know if it's good
16 news or bad news, but you have been accepted for this jury.
17 So now the hard part begins. Obviously, the attorneys
18 thought you were very thoughtful and deliberate in your
19 understanding and your answers and your reflection upon
20 these issues.

21 The hardest part from this point forward
22 is now that you know you are going to be sitting in this
23 case -- I've prepared some written instructions for you --
24 that you have already told us you haven't done any
25 independent investigation, you haven't looked at the media,

1 you haven't looked at the Internet. You are now under court
2 order not to do that.

3 PROSPECTIVE JUROR: Okay.

4 THE COURT: As the attorneys have said,
5 they are satisfied with your ability to be able to judge
6 everything that you hear on this case from that witness
7 stand and nowhere else. The Sheriff will go over with you
8 some other details this afternoon.

9 I can't tell you the exact date, but it
10 will be sometime before November 10th, once I get all the
11 jury selected and I have the jury, I will have everybody
12 back down here for a group orientation. Should be about an
13 hour. We have some procedures that we can't go over until
14 we get everybody here. Does that make sense, some sense, to
15 you?

16 PROSPECTIVE JUROR: Yes.

17 THE COURT: The objective is, and now you
18 have seen, is I start on time. I think you see I'm very
19 organized. You will get a letter with enough time to plan
20 your schedule to be here. I told you to be here starting at
21 1:30, probably an hour and a half. It's -- we're pretty
22 much on schedule. The objective is that when we start this
23 case on Monday morning, November 10th, at 8:30, that means
24 that you will be in the box and the State will present their
25 indictment at 8:30. That doesn't mean you are here at 8:30

1 and we jerk around until 10:00.

2 PROSPECTIVE JUROR: Good.

3 THE COURT: That's one thing that you can
4 count on. And you are an independent businessman and I will
5 not waste your time. I've even had jurors ask for breaks,
6 okay? So that's one thing you can count on. We start on
7 time and if I take a break or do something that I have to do
8 procedurally, I have to tell -- I will tell you, I need two
9 hours. There are certain procedures that I have to manage
10 that I make time for. And we may quit early in the day.
11 But I will not have you here and waiting around two hours
12 before we start.

13 PROSPECTIVE JUROR: I like that.

14 THE COURT: We will get along just fine.
15 Sheriff, if you would, I have a supplemental information
16 sheet that she's going to go over with you and check
17 information that we have entered into the computer. This is
18 my information. It's contained in my computer. Your
19 information sheet that you had this afternoon, I printed it
20 right here and it will be shredded this afternoon. That way
21 we keep real tight security on your information. But this
22 is so we can make contact with you.

23 So with that, if you will go with the
24 Sheriff and she'll give you some other instructions.

25 [Prospective juror out]

1 THE COURT: Jacqueline Wiley.

2 [Prospective juror in]

3 THE COURT: Please have a seat. How are
4 you doing?

5 PROSPECTIVE JUROR: Fine. And you?

6 THE COURT: Is it Jacquelyn Wiley?

7 PROSPECTIVE JUROR: Yes.

8 THE COURT: And, Ms. Wiley, welcome to
9 the 283rd. Sorry for the delay. We never know exactly how
10 long we're going to talk to someone. You came up second.
11 That's the way the computer put your numbers in the till.

12 PROSPECTIVE JUROR: All right.

13 THE COURT: Obviously, you have had
14 enough time to read and get bored on the orientation guide I
15 provided for you. It's a lot of law to give someone. We
16 don't expect you to understand it completely. The lawyers
17 will go over it with you to provide examples on how it
18 relates.

19 The two questions that I have at the end
20 of the process are, number one, do you understand the law?
21 Number two, can you follow the law? That's my function.

22 At this point the only question I have
23 for you is this trial shall begin on November 10th. Do you
24 have any reason why you cannot serve this Court for those
25 two weeks?

1 PROSPECTIVE JUROR: Yes, sir, I do.

2 THE COURT: Yes, ma'am.

3 PROSPECTIVE JUROR: Kind of a personal
4 medical issue. But urinary incontinence, frequent use of
5 the restroom. So I don't know how often you all --

6 MS. BUSBEE: Your Honor, we don't want to
7 embarrass her. We'll agree. You're a perfect stranger.
8 You don't have to tell us.

9 THE COURT: Despite what you see on TV
10 and despite what you think you might know about lawyers,
11 these guys are a good group to work with and sorry you had
12 to come in and make that revelation, but they have agreed to
13 let you off. Maybe we'll have a shorter trial for you
14 later.

15 PROSPECTIVE JUROR: Yes, thank you.

16 THE COURT: Thank you, Ms. Wiley.

17 [Prospective juror out]

18 THE COURT: Nancy Joy Carney.

19 [Prospective juror in]

20 THE COURT: Good afternoon. Is it Ms.
21 Nancy Joy Carney?

22 PROSPECTIVE JUROR: Yes.

23 THE COURT: And do you prefer your first
24 name Nancy or Joy?

25 PROSPECTIVE JUROR: Nancy.

1 THE COURT: So I can make my computer do
2 the right thing. Ms. Carney, welcome to the 283rd. You
3 never know exactly how long we're going to speak with
4 someone. The first gentleman we talked to for over an hour
5 and the second lady we talked to 30 seconds. So I hate to
6 have you wait until you get to the door. I have to make a
7 balancing on ten people in here and one or two people
8 outside. I never know how long. I apologize for your wait.

9 PROSPECTIVE JUROR: That's fine.

10 THE COURT: You have had enough time to
11 go through and get bored reading the material that I
12 provided for you. That's a lot of law. I understand that.
13 The objective is for you to start thinking about these
14 issues. The lawyers are going to follow up with examples on
15 how the law relates.

16 And my bottom line at the end of the
17 process are two questions, one, do you understand the law?

18 PROSPECTIVE JUROR: Yes.

19 THE COURT: Secondly, can you follow the
20 law?

21 PROSPECTIVE JUROR: Yes.

22 THE COURT: All right. It's easy to say
23 yes right now. They're going to spend a little time with
24 you and go through that. The only question that I have for
25 you, will you be able to serve this Court for the two weeks

1 beginning on November 10th?

2 PROSPECTIVE JUROR: Yes.

3 THE COURT: With that I shall turn it
4 over to Mr. Wirskeye.

5 MR. WIRSKYE: May it please the Court.

6 NANCY CARNEY,

7 having been duly sworn, was examined and testified as
8 follows:

9 DIRECT EXAMINATION

10 BY MR. WIRSKYE:

11 Q. How are you this afternoon?

12 A. Good.

13 Q. Good. Thanks for being with us. We've kind
14 of got distractions in front of us, don't we?

15 A. Yes, a couple.

16 Q. See if I can move over. How's that? Your
17 chair doesn't move. It kind of swivels. But thanks for
18 waiting with us. What I would like to do is go over some of
19 the information that you were kind enough to give us in the
20 long questionnaire that you filled out, talk to you a little
21 bit about your thoughts and feelings about the death
22 penalty, and maybe, finally, talk about some of the law that
23 applies.

24 It's a little bit intimidating to some
25 people to have to be up there on the witness stand. You

1 probably feel like you are on trial. Because this is a
2 death penalty case, the law requires that we talk to you
3 individually. This is kind of the best way that we have
4 found to do it, so I apologize that you are up there on the
5 witness stand.

6 But what did you think when you got the
7 word that you had to come back for the individual interview?

8 A. Um, I was kind of frightened. Um, I think it
9 will be hard to actually have to give someone the death
10 penalty, so I was kind of worried about that.

11 Q. And, you know, you saw the people that you
12 were down with, I guess, back in May?

13 A. Uh-huh.

14 Q. And we had a group that big in the afternoon
15 and everybody fills out the questionnaires. And we talked
16 to a lot of people and we know this isn't exactly everyone's
17 cup of tea. Some people don't believe in the death penalty.
18 They wouldn't be qualified. Some people always believe in
19 the death penalty and you don't want them on the jury,
20 either. They are not qualified.

21 We're looking not only for someone that
22 can follow the law, but someone who is completely
23 comfortable with the process, I guess, both with the death
24 penalty philosophically or in the abstract and the people
25 who are also comfortable when you get down here and it

1 becomes a little more real. You know, you are actually just
2 a few feet away from making the jury and having to make
3 those life or death decisions?

4 A. Uh-huh.

5 Q. Now, you told us you are generally in favor,
6 philosophically, of the death penalty?

7 A. Right.

8 Q. Where did it come from and why do you favor
9 it?

10 A. Um, I'm not sure really where it comes from,
11 but I just believe that if you commit a certain crime, then
12 you should be punished in a way that fits that crime, I
13 guess.

14 Q. Okay. Is that something that you have gone
15 back and forth on or is it something that you have kind of
16 always believed?

17 A. I think it's something that I have always
18 believed.

19 Q. When you think about an appropriate type of
20 case for the death penalty, what comes to mind? What type
21 of case or what set of facts?

22 A. Um, someone who murders or kills someone with
23 planning. I guess what comes to mind is like mass murderers
24 and those types of people.

25 Q. Okay. Is there a particular case you may have

1 heard about, read about, or seen in the media or followed
2 that comes to mind when you think of a death penalty case?

3 A. No.

4 Q. Okay. In Texas, as you may know, we gave you
5 that packet of law to read. I don't know how much sense it
6 made to you, just reading it cold, but the death penalty is
7 only available in a murder case and then only a certain type
8 of murder case, mass murder, serial murders, as you have
9 described. If you murder a police officer, a fireman on
10 duty, a child under six, or if you commit an intentional
11 murder during the course of another crime like in a robbery
12 or burglary or somebody breaking into your house or sexual
13 assault or rape, that type thing.

14 And those are kind of the cases that the
15 option of the death penalty is reserved for in Texas. Is
16 that something that kind of is in accord with what you
17 believe or kind of jives with what you believe?

18 A. Yes.

19 Q. Let me touch on another area with you. We
20 talked to a lot of people, some that are very strongly in
21 favor of the death penalty. But some people would draw a
22 line in certain types of cases.

23 What I mean by that is this. I think
24 when we think about a death penalty-type case, we often
25 think maybe one person acting alone, one person going into a

1 7-Eleven, holding up the clerk, shooting and killing them,
2 making off with the money.

3 Oftentimes crimes are committed by more
4 than one person. A group or a gang of people oftentimes
5 commit a crime. In Texas and every other state, they could
6 be held accountable, everyone that participated in the
7 crime. In a death penalty scenario when we talk about
8 giving that sort of extreme punishment, a lot of people tell
9 us that they would just reserve the death penalty for a
10 person that actually caused the death. I guess for lack of
11 a better word the triggerman, the person that actually
12 pulled the trigger, actually caused the death. And they
13 draw that bright line.

14 And when it came to the person who was
15 the accomplice, I guess, as you probably heard that word,
16 the nontriggerman, the people that helped in the crime but
17 didn't actually cause the death, for those type people they
18 take the death penalty off the table. You know, they may
19 convict him and put him in prison for life, give him still a
20 severe punishment, but they just don't think the death
21 penalty is justified in that type of scenario. What do you
22 think about that?

23 A. Um, depends on how much planning, I guess,
24 they had in the murder, if they knew that that was the
25 intent of the person was to kill the other person, I think

1 they should probably suffer the same consequences as the
2 person who shot them.

3 Q. Okay. So you wouldn't automatically take the
4 death penalty off the table for an accomplice or a
5 nonshooter, that type deal?

6 A. No.

7 Q. Okay. Let me give you a fact scenario and see
8 what you think about that. Let's say the other prosecutor,
9 Mr. Shook, and I get together with a third friend of ours
10 and, say, we all need money because we have law school
11 student loans, something that sounds like you will be
12 familiar with pretty soon. So we need some money real bad.

13 So we decide to rob a bank. The plan is
14 Mr. Shook is going to take a gun and go in, hold up the
15 teller. I'm going to go in unarmed. I would have my bag to
16 start collecting the money from the tellers. And our third
17 friend who has the car and drives us up there, waits outside
18 and kind of keeps a lookout for the cops and let us know if
19 any show up. And that's what we agree to.

20 And as we go to do this bank robbery, say
21 for whatever reason, maybe one of the tellers looks at
22 Mr. Shook the wrong way or he thinks they're going for a
23 silent alarm or something like that and call 911, he shoots
24 and kills one of the tellers. He's committed capital
25 murder, an intentional murder during the course of a

1 robbery. He could be convicted of capital murder and could
2 face the death penalty, depending on how the jury answers
3 these questions that you read.

4 What do you think about me in that
5 scenario, the nontriggerman, or the accomplice, who just
6 went in to collect the money?

7 A. Um, I don't think that you would deserve the
8 death penalty.

9 Q. Why do you say that?

10 A. Um, because you didn't tell him or you were
11 not planning on killing anyone.

12 Q. Okay. Is there anything, if you change the
13 facts up a little bit that would make it a clearer case to
14 give me perhaps the death penalty or where you would
15 consider the death penalty in my case?

16 A. Um, maybe if you had a weapon as well, or if
17 y'all had intended before you went in to rob the place,
18 y'all had intended to kill someone.

19 Q. Okay. We kind of made a plan.

20 A. You are going to kill this one.

21 Q. Whatever we need to do to get out of here --

22 A. Yeah.

23 Q. -- I guess, that type deal, not leave any
24 witnesses. Or if I had a gun, that would make a difference
25 to you?

1 A. Yes.

2 Q. What about the getaway car driver out front?

3 A. Um, I guess the same kind of scenario. If
4 they had a weapon, if there was a plan to kill people, no
5 matter what it took to get away safely.

6 Q. Okay. Let me tell you, it sounds like you are
7 fairly close to what the law is. The law is when we talk
8 about accomplices, in Texas we call it parties to a crime.
9 Instead of accomplice, they would be a party to a crime.

10 But in that type scenario, if I aided,
11 assisted, promoted, directed, or solicited Mr. Shook to
12 commit a capital murder, actively involved in it, then I
13 could be held guilty and ultimately face the death penalty,
14 just like he does. Or if, going back to my scenario under
15 the law of conspiracy, we conspire or agree to commit one
16 crime, the bank robbery, and a murder happens during that, a
17 capital murder is committed in furtherance of that bank
18 robbery, an accomplice like me should have anticipated, even
19 though I didn't intend for anyone to get hurt, but if I
20 should have anticipated, I could also be on the hook for
21 capital murder and face the death penalty. What do you
22 think about that, that being the law?

23 A. I guess if you go in to rob someone and you
24 have a weapon, you probably intend on maybe using it.

25 Q. Okay.

1 A. So --

2 Q. A lot of people tell us it's kind of a common
3 sense proposition, I guess.

4 A. Uh-huh.

5 Q. A person such as me that didn't have that
6 intent, you know, I just signed up for a bank robbery. I
7 never wanted the murder to happen. You know, assuming I
8 wasn't armed --

9 MS. BUSBEE: Your Honor, may we approach
10 the bench?

11 THE COURT: You may.

12 (Bench conference)

13 MS. BUSBEE: Your Honor, I object based
14 on reasons that were stated in a sidebar to be put on the
15 record at a future time this afternoon.

16 THE COURT: Sustained.

17 Q. (By Mr. Wirskye) I guess the bottom line is
18 you wouldn't automatically take the death penalty off the
19 table as an option when we're talking about an accomplice?

20 A. No.

21 Q. Okay. Just to be up front with you, the
22 reason we're talking about this and kind of belaboring the
23 point, is we're prosecuting Mr. Murphy as an accomplice to
24 the crime and that's why we spend so much time talking to
25 people like you about it, again, to make sure once you get

1 down here and it becomes more real, that you are exactly
2 comfortable with what we may ask you to do. You are a
3 nurse; is that right?

4 A. Yes, sir.

5 Q. Where do you work or what are your duties?

6 A. I work in the intensive care unit at Zale
7 Lipshy University Hospital. I take care of critically ill
8 patients.

9 Q. Like people that come in from the emergency --
10 I say that to show my ignorance, but people that come in
11 from the emergency room or other type cases or --

12 A. Well, Zale Lipshy doesn't have an emergency
13 room, so the only way that you can get there is if you are
14 accepted by a physician. So most of our ICU patients are
15 surgical patients. We deal maybe 60 to 70 percent in
16 brain-type injuries, aneurysms, and vascular issues in the
17 brain.

18 Q. Okay. Looks like also at some point you were
19 a 911 dispatcher; is that right?

20 A. Uh-huh.

21 Q. Where was that?

22 A. I went to Texas A&M University and while I was
23 there, I volunteered on the ambulance. I was on the
24 ambulance as well as a dispatcher. And then I also had a
25 part-time job dispatching ambulances for hospitals there in

1 College Station.

2 Q. In connection with that, did you come into
3 contact with a lot of police officers and things like that?

4 A. Um, not a lot. We didn't need police officers
5 for many of our calls, but there were a few that we would
6 have police officers at.

7 Q. Okay. The fact that you are a nurse and you
8 do work in the intensive care unit, I guess, with kind of
9 life or death cases there, I guess, people that are severely
10 or critically ill, how do you think that might affect you,
11 if you were actually picked in this case to be a juror?

12 A. Um, I think I accept death in a different way
13 than maybe most people do, just because I see death on
14 pretty much a daily basis. So I guess I just accept death
15 as part of life.

16 Q. Okay. We talked a little bit about maybe some
17 of the concerns, I guess, that kind of frightened you coming
18 down and being a part of this process. Do you feel
19 completely comfortable maybe serving on a jury where the
20 death penalty is going to be an issue -- at issue?

21 A. Not completely comfortable, but I think that
22 it's probably my duty or -- I've thought about it, I guess.
23 I think that I would be able to decide, but I think that it
24 would be a hard decision to make.

25 Q. Okay. Because of, I guess, the life and death

1 decision that is involved?

2 A. Yes.

3 Q. Again, we talk to a lot of people and we
4 really don't want to -- I know that not everyone is cut out
5 for it and comfortable is probably a bad word. But we at
6 least want to be sure that people that are on the jury,
7 we're not forcing them into some type of crisis of
8 conscience or things like that.

9 And we talk to a lot of people that say
10 they would be scared or frightened and maybe on down the
11 line that would weigh on their conscience or their mind
12 because oftentimes the details of executions are reported.
13 And you know from being in Texas, we are the most active
14 death penalty state in the United States. The death penalty
15 is a reality here. Jurors give it, it's assessed, it's
16 carried out.

17 You know, the death penalty procedure is
18 pretty much the same in every case and it's what you may
19 hear reported. A jury finds a person guilty of capital
20 murder and answers those three questions in such a way, a
21 yes, yes, and no answer, that they are a future danger, that
22 they did anticipate a life would be taken, no, there's
23 nothing mitigating, then at that point the Judge would have
24 no choice. He would sentence the defendant to death.

25 The person would be taken immediately to

1 death row, in Texas, in the Livingston Unit, where they stay
2 until some day in the future. I can't tell you when or how
3 long, but some day in the future Judge Cunningham would set
4 an execution date.

5 Before that day or on that day, the
6 defendant would be taken from the Livingston Unit to the
7 Walls Unit, which is the old prison in downtown Huntsville,
8 be taken to a cell right outside the death chamber. You may
9 have seen the death chamber. It's the gurney we have with
10 the leather straps.

11 A. Uh-huh.

12 Q. He would be taken there that day and be given
13 a chance to meet with friends, family, spiritual advisors,
14 be given a last meal. As it got close to 6:00 p.m., which
15 is the time in Texas that is mandated for executions, he
16 would be taken from that holding cell over to the death
17 chamber. He would either go voluntarily or he would be
18 moved involuntarily, be strapped down on the gurney.

19 An IV would be started. There would be
20 witnesses for both sides, for the victim's friends and
21 family members, his friends and family members. He would be
22 given a chance to make a last statement. He may beg for
23 forgiveness and he may proclaim his innocence.

24 At some point the warden will signal the
25 executioner. The poisons will be released through the IV.

1 The heart and lungs would shut down and he would eventually
2 lose consciousness and die.

3 I don't want to be morbid with you,
4 although you are a nurse, but these are the type details
5 that are reported. And I want to make sure that, you know
6 yourself better than anyone, that you think in your heart of
7 hearts that you are the type person that can take pen in
8 hand and answer these three questions in such a way that it
9 may result, you know, in the death of a living, breathing,
10 human being, someone you have seen day in and day out in
11 court for two weeks. What do you think about that?

12 A. I think that I could. I hope that I could,
13 because then I really couldn't believe in the death penalty,
14 if I wasn't able to really follow through with, I guess,
15 holding up the death penalty.

16 Q. Okay. So even though you may have some, I
17 guess, nervousness about it, you feel that you could
18 participate as a juror in that type case?

19 A. Uh-huh.

20 THE COURT: Yes or no.

21 PROSPECTIVE JUROR: Yes.

22 THE COURT: I know you are nervous, but
23 she has to record everything. So head nods -- and you have
24 to give a verbal --

25 PROSPECTIVE JUROR: I didn't realize that

1 I didn't say it.

2 Q. (By Mr. Wirskye) Now, you've told us that,
3 like almost everybody we talked to, you have heard something
4 about this case in the media. It's kind of a high profile
5 case; is that right?

6 A. You know, I'm really not sure. I thought when
7 I first read about it, just in here, that maybe I had. But
8 since then I haven't -- I haven't really discussed it with
9 anyone or I really don't know if I know anything about the
10 case.

11 Q. Okay. So as far as you know, as you sit there
12 right now, there's nothing in your mind that would possibly
13 influence your verdict at this point?

14 A. No.

15 Q. Okay. If it's a situation where you did get
16 picked as a juror and you started to hear some testimony and
17 say, gee, I did hear something about this case, the law
18 would require you at that point not necessarily to forget
19 what you may have heard through the media, but kind of put
20 that in the back of your mind and just base your verdict on
21 what you hear in the courtroom, the facts and evidence in
22 the courtroom. Is that something that you think you can do?

23 A. Yes.

24 Q. Okay. And that's basically as we go along,
25 pretty much what I'll be asking you, telling you the law and

1 asking if you can follow it, this type of thing. Where is
2 your husband in law school?

3 A. At SMU.

4 Q. What year is he there?

5 A. His first year -- actually his second now. He
6 just started his second.

7 Q. Does he have any idea what type of law he
8 wants to practice?

9 A. He doesn't want to do litigation.

10 Q. Are you happy with that choice, I guess?

11 A. Whatever he wants to do.

12 Q. Okay. If you are picked to serve as a juror
13 on this case, do you think he may want to talk to you about
14 it every night or try to influence your decision? I keep
15 thinking back me. If my wife was on a death penalty case
16 when I was in law school, I can only imagine what a pest I
17 would be for trying to annoy her for details or telling her
18 what the law really is, instead of what the Judge says.

19 A. Right. I think that since he's just starting
20 law school, he doesn't really know that much and he knows
21 that he doesn't know much. But he is --

22 Q. That's rare. That's very rare.

23 A. He was trying to tell me today what y'all were
24 going to be asking me, the prosecution wants to know this,
25 and I was like, Ryan.

1 Q. Has he been right so far?

2 A. Um, yeah, on a few things. He has his own
3 stuff to worry about.

4 Q. You really don't think that would be a factor
5 to either side?

6 A. No.

7 Q. Obviously, again, you have to base your
8 verdict on what you hear here in the courtroom and the law
9 that the Judge gives you. You know, it really wouldn't be
10 fair to either side if we kind of let that wild card law
11 student type deal come into play.

12 A. Yeah.

13 Q. As we talked about, trials in Texas are
14 usually in two parts. The first part is the guilt/innocence
15 where you are just concerned whether we have proven it to
16 you beyond a reasonable doubt that he's guilty of the crime
17 of capital murder.

18 If he's found guilty of capital murder,
19 that's when we move into the second phase. You get to hear
20 extra additional evidence, maybe, about his background, his
21 history, that type of thing. And that's where we ask the
22 jury to answer these three Special Issues. I like to call
23 them questions. That's all they are.

24 I know you had a chance to look at them
25 in the booklet, but if you will take a few minutes and read

1 them up on the board on the wall.

2 A. (Prospective juror complies.)

3 Q. Those are the three questions that we ask a
4 jury to decide. You know, we don't ask you to write in a
5 life sentence or death sentence. We just let answers to
6 these questions determine the appropriate sentence.

7 Let's look at Special Issue 1 or question
8 No. 1. This is kind of what we generally refer to as the
9 future danger question, whether there's that probability
10 that they will commit criminal acts of violence in the
11 future such that they would be a continuing threat to
12 society. Does that question make sense to you as you just
13 read it?

14 A. Yes.

15 Q. You see how it's kind of asking a juror to
16 make a prediction about future behavior?

17 A. Yes.

18 Q. Is that something that you would feel
19 comfortable doing, making --

20 A. Yes.

21 Q. -- making that sort of prediction?

22 A. Yes.

23 Q. Any type of information that you feel would be
24 important to you in making that decision?

25 A. Um, maybe past acts of violence or past

1 history.

2 Q. Okay. And that's typically what we hear.
3 That question has several words and phrases that aren't
4 necessarily defined. You know, they don't have the legal
5 definitions like a lot of things that we deal with. But
6 that word "probability", what kind of definition would you
7 give that or what does that mean to you?

8 A. Highly likely that he would commit another
9 crime or commit another act of violence.

10 Q. And that's what we hear a lot, likelihood or
11 more likely than not. Does that make sense to you?

12 A. Yes.

13 Q. The law gives us a little bit of guidance.
14 It's something more than a probability, because anything is
15 possible. But it's something less than a certainty,
16 obviously a likelihood or that type of thing. Does that
17 make sense to you?

18 A. Yes.

19 Q. Also that phrase on the second line in the
20 middle, the "criminal acts of violence." What pops into
21 your head when you think about that phrase?

22 A. Um, maybe another murder or any type of harm
23 to other people in society.

24 Q. Okay. Would you necessarily require another
25 murder or could it be some other act?

1 A. No. I don't think it would have to be murder.

2 Q. I think that's pretty much what the law is.

3 You know, we don't necessarily have to prove to you that he
4 would be involved in another murder or take a life, that
5 type of thing, just anything criminal in its nature that
6 involves violence. Does that make sense to you?

7 A. Yes.

8 Q. And, finally, that last word, "society." When
9 you think of society, what do you think of? How would you
10 define that or what would you include in that definition?

11 A. Um, everyone.

12 Q. Okay. Would you include both, I guess,
13 nonprison populations, those of us in the free world, and
14 prison population?

15 A. Yes.

16 Q. That's pretty much what we hear. What the law
17 says, anyone who you may come into contact with, nurses in
18 prison, teachers, wardens, guards, that type of thing. This
19 question starts off with a no answer and that's kind of a
20 default setting on questions No. 1 and 2.

21 And on both of those questions, the State
22 at this table, we have the burden of proving to you that the
23 answer to those two questions should be yes. That's our
24 burden. This side doesn't have to do anything. They never
25 have to prove anything to you in the course of the whole

1 trial.

2 But they start off with that no or
3 default setting of no and we have to prove it to you. Does
4 that make sense?

5 A. Yes.

6 Q. And the law basically requires or kind of
7 contemplates or envisions that, you know, you kind of start
8 the second phase of that trial, the punishment phase, with
9 that open mind. Okay? You find him guilty of capital
10 murder, but you have to go into that second phase with the
11 open mind.

12 And what I mean by that is you can't
13 necessarily say, well, I'm going to answer Special Issue No.
14 1 yes, just because I found him guilty of capital murder.
15 Okay? And when you get to the second phase, you can,
16 obviously, go back and look at the facts of the crime to
17 help you make that decision, along with some additional
18 information, his history, that type thing.

19 A. Okay.

20 Q. But the point is you have to start with an
21 open mind, you know, one verdict or one answer to one
22 question doesn't necessarily automatically help you answer
23 another one. We kind of require a juror to really use some
24 mental discipline, work through these questions one by one,
25 and kind of make an independent inquiry into each question.

1 Does that make sense to you?

2 A. Yes.

3 Q. Because we do have some people, frankly, that
4 tell us, you know, if I found someone guilty of capital
5 murder, my mind is closed to Special Issue No. 1. For
6 instance, I'm always going to think they are a future danger
7 and I'm going to answer that automatically yes, just because
8 I found him guilty of capital murder.

9 That person wouldn't necessarily be
10 qualified because they wouldn't be able to follow the law.
11 They wouldn't be able to keep that open mind. Is that
12 something you think you could keep that open mind? You
13 wouldn't automatically answer that yes, just because you
14 found him guilty?

15 A. Um, yes, I think I could keep an open mind.

16 Q. And obviously you can go back and look at the
17 facts of the crime and look at everything else. But, like I
18 said, we just want you to start fresh with a clean slate
19 when we get to that second phase of the trial.

20 It's the same thing for Special Issue No.
21 2, and that question basically deals with a kind of a
22 scenario we've already talked about, when we have more than
23 one person involved in the crime. It's kind of a three-part
24 question. I mean, if you think the person was, again, for
25 lack of a better term, a triggerman, you are going to find

1 out they actually caused the death of the deceased, it would
2 be easy.

3 And if you think the State has proven to
4 you beyond a reasonable doubt that the defendant intended to
5 kill the deceased or another, then you would answer yes.
6 That may be a type scenario like a murder for hire. You
7 hire somebody to kill your husband or your business partner,
8 that type thing. Obviously, you would intend the death, but
9 you didn't actually commit it and that type thing.

10 And the very last line on Special Issue
11 No. 2, again, following up on what we talked about earlier,
12 to answer that question yes, you would have to find that the
13 accomplice anticipated that a human life would be taken.
14 When you are talking about finding an accomplice guilty of
15 capital murder in the first phase of the trial, the question
16 is, going back to my example, should I have anticipated that
17 a life would be taken? If you think the State has proven it
18 to you beyond a reasonable doubt, you can find him guilty.

19 When we get to the second phase of the
20 trial, that second question, the law gives us a little bit
21 higher burden. We have to prove not only that they should
22 have anticipated, but that they did anticipate that a life
23 would be taken.

24 And, again, you know, it may be the same
25 evidence that you use that you heard in the first part of

1 the trial. You may find out some additional evidence in the
2 second part of the trial to help you answer that.

3 Again, the bottom line is you are going
4 to have to go into that question with an open mind, take a
5 fresh look at everything you have heard in the first part of
6 the trial and the second, and decide whether we've met our
7 burden, we have proved to you the answer should be yes
8 beyond a reasonable doubt. Does that kind of make sense?

9 A. Yes.

10 Q. Okay. Finally, with Special Issue No. 3, it's
11 kind of what we call the mitigation question. It's really
12 kind of the last stop in the process. I think a lot of
13 people think of it as a safety net because at this point
14 when we get to Special Issue No. 3, you have found the
15 person guilty of capital murder, you found they are going to
16 be that future danger, you found they anticipated that a
17 life would be taken. This is the last step.

18 We ask a jury to kind of stop, take a
19 deep breath, go back and look at everything they have heard,
20 the facts of the crime, what you may have heard about his
21 character and background, to look at what kind of personal
22 moral culpability he has, you know, what blame does he bear
23 in the crime?

24 And ask yourself, looking at all that, is
25 there anything mitigating, anything that lessens his blame,

1 and if there is, is it sufficient that his life ought to be
2 spared and he shouldn't receive the death penalty, and he
3 ought to get that life sentence. Does that make sense to
4 you, that question?

5 A. Yes.

6 Q. Do you see the value in having that question,
7 even kind of that last step in the process?

8 A. Yes.

9 Q. Okay. The law doesn't tell jurors what
10 mitigating is. We kind of leave it up to you. Is there
11 anything that strikes you, maybe, as potentially mitigating
12 as you sit there and think about it? Any sort of facts or
13 factors in these types of cases?

14 A. Um, I think there could be a lot of different
15 things, actually.

16 Q. We ask people, the most common response is
17 most people can't think of anything, because we hope you
18 don't sit around thinking of these things, but what were you
19 going to say?

20 A. Um, well, in here it was asking about alcohol
21 and drug use at the time. There's also mental health
22 issues, I guess.

23 Q. Okay. Let's talk about alcohol. When we talk
24 to people, some people think, you know, if a person -- we're
25 talking about voluntary intoxication, not if somebody drugs

1 someone and that type deal. But some people may feel that
2 if a person had got drunk or used drugs or alcoholic or drug
3 addict, that may be potentially mitigating, somehow lessen
4 their blame. Other people say no, it doesn't. They have
5 choices and that actually may be aggravating that they
6 choose to get high and do these types of things. Where do
7 you come down between those two extremes?

8 A. I'm on the second one that you stated. I
9 think that you choose to drink and you choose certain paths
10 in your life. And if you choose that and you commit a
11 crime, you still committed the crime.

12 Q. Okay. What do you think about a person's age?
13 Some people tell us, you know, if the person is younger,
14 maybe that could be potentially mitigating, they haven't had
15 the life experience, that type thing, or some people say, if
16 you are old enough to do the crime, you are old enough to
17 suffer the consequences, that type of thing. Where do you
18 come down on that?

19 A. Probably more on the second end of that one,
20 too.

21 Q. How about a person's upbringing? Some people
22 tell us, you know, if a person was, I guess, severely
23 physically or mentally abused, you know, as a youth, had a
24 tough go of it when they were younger, that may be
25 potentially mitigating. And, again, other people say, no,

1 you are old enough to make choices at some point and you
2 have to be responsible. What do you think about that?

3 A. A second end of that as well. I think that
4 you still make your own decisions in your life, no matter
5 what has happened to you previously.

6 Q. Okay. And you talked about a person's, I
7 guess, mental state?

8 A. Uh-huh.

9 Q. You know, we're obviously not talking about
10 mental retardation here. Someone who is that retarded or
11 somebody who has such a mental defect that they don't know
12 the difference between right and wrong, obviously, this
13 would be the chance to take that type of information into
14 consideration.

15 The law, again, requires that you just
16 keep an open mind to mitigation. You don't have to think of
17 anything now. Legally, you don't have to consider any
18 factor mitigating. We leave it up to you. You don't even
19 have to agree with the other jurors, you know. You just
20 have to be able to tell us, to be qualified, I can keep that
21 open mind. That question still has value to me, even at
22 that late stage. If I hear something that is mitigating,
23 I'll consider it and if it's sufficiently mitigating, then I
24 will spare his life.

25 Do you think that you can follow that law

1 and keep that open mind?

2 A. Yes.

3 Q. Okay. Do you have any questions about the --
4 kind of the scheme that we have, the two parts of the trial
5 or the three Special Issues or three questions that we
6 talked about?

7 A. How much time is usually between the first and
8 the second part of the trial? Is there like a time period?

9 Q. Once the jury reaches a verdict, usually we,
10 in this court, the Judge is very efficient, we usually start
11 that second phase almost immediately, depending on what time
12 of the day the verdict comes in. We anticipate, our best
13 guess, is the trial will last two weeks, maybe a little
14 less, maybe a little more.

15 THE COURT: Hopefully less.

16 Q. (By Mr. Wirskye) Is that a concern of yours?

17 A. No, I was just wondering.

18 Q. It's not like some states where it cranks up
19 like a month later or something. It's a two-part process,
20 but we kind of look at it as one trial, really. Any
21 questions at all about anything else? The burden of proof
22 or what you have to do, the open mind, independent inquiry,
23 or anything of that?

24 A. No.

25 Q. Let's talk a little bit, generally, about some

1 of the rules that apply at every trial. You may have heard
2 about them. You may have heard about them from your
3 husband, I don't know.

4 In our criminal system all defendants are
5 presumed innocent. You know, the fact that he's been
6 arrested, indicted, or he's sitting here in court today is
7 no evidence of his guilt. You have to presume he's innocent
8 and it's up to us to prove to you beyond a reasonable doubt
9 that he's guilty. If for some reason we all quit this trial
10 right now and went home, you would have to find him not
11 guilty. Does that make sense?

12 A. Yes.

13 Q. We've talked a little bit about the burden of
14 proof. We have it at this table. We have to prove his
15 guilt. We have to prove Special Issues No. 1 and 2 should
16 be yes. This side doesn't have to do anything. You
17 probably anticipate they will. They are fine lawyers. But
18 legally they just have to show up. They can sit here and do
19 crosswords and it's always up to us. We always have the
20 burden of proof.

21 Sometimes we have jurors that say, you
22 know, in order for me to answer one of those Special Issues,
23 I'm going to need them to prove something to me, the
24 defense. Or I'm going to need to hear from the defendant
25 and that's just not how our laws are set up. We always have

1 the burden in that type of thing. Does that make sense?

2 A. Yes.

3 Q. Following up on that, the Fifth Amendment, the
4 person charged with a crime has the absolute right not to
5 take the stand in his own defense. If he doesn't want to
6 testify, no one can force him. If he does want to testify,
7 no one can stop him.

8 The Judge will tell you that if he does
9 not testify, that the jurors cannot consider that in their
10 deliberations. It's just a nonfactor, basically. And
11 that's kind of in recognition of there may be many reasons
12 why he doesn't testify. He may be guilty. Maybe he's not
13 well spoken or maybe his lawyers tell him not to.

14 So basically if he doesn't testify, the
15 Judge will tell you, you just can't consider it. Does that
16 make sense to you?

17 A. Yes.

18 Q. Okay. Did you get a chance to look at the
19 indictment on the back of that last page of the booklet?

20 A. Uh-huh, yes.

21 Q. That's basically what we have to prove. We
22 have kind of alleged that a crime has been committed two
23 different ways, capital murder, intentional murder in the
24 course of a robbery, and also the murder of a police
25 officer. If we prove one or both of those to a jury beyond

1 a reasonable doubt, the law would entitle us to a guilty
2 verdict, if the jurors feel we have met our burden.

3 Each of those crimes is kind of broken
4 down into different elements that we have to prove, that a
5 certain person on or about a certain day in a certain county
6 killed a certain person in a certain way, basically, is one
7 way to kind of summarize it. But those would be very
8 roughly the elements of the crime.

9 As a part of our burden of proof, the law
10 requires that we prove each and every element of the
11 indictment. You know, we can't go nine for ten or we can't
12 get partial credit or if we almost get there, a juror can't
13 help us out. Does that make sense to you?

14 A. Yes.

15 Q. We have to prove everything. As a part of
16 that, the law also says that one element is not necessarily
17 any more important than the other. You know, just an easy
18 example is, say we don't prove that we have the right
19 person. We don't prove the element of identity. We don't
20 prove that, you have to find the defendant not guilty.

21 By the same token, if we don't prove the
22 county a crime happened in, we would have to prove that or
23 find the defendant not guilty. That's kind of a far out
24 example, but let me give that to you.

25 Let's say we allege in our indictment

1 that a capital murder happened in Grand Prairie. Some of
2 Grand Prairie is in Dallas County and some is in Tarrant
3 County. The guys at this table, the DA's, we don't do our
4 jobs and we get sloppy. And we alleged that it happened in
5 Dallas County.

6 You are a juror on that case and you feel
7 beyond a reasonable doubt or you find beyond a reasonable
8 doubt that the guy committed the murder, but you also find
9 beyond a reasonable doubt it happened in Tarrant County. We
10 didn't prove one of our elements. We went nine for ten.
11 You may feel it's a technicality, wouldn't be happy about
12 it. We would lose our jobs. But the law would require you
13 to find the person not guilty. Does that make sense to you?

14 A. Yes.

15 Q. It's the same type thing. If we allege a
16 person was shot to death with a pistol. The medical
17 examiner comes in here and says, no, the cause of death was
18 actually cutting with a blade. We just got it wrong. We
19 missed an element. We didn't do our jobs. You would have
20 to find the defendant not guilty. Does that make sense to
21 you?

22 A. Yes.

23 Q. Okay. You know, as you are looking at that
24 indictment, we have alleged a police officer was shot and
25 killed. You can obviously expect in a criminal case, such

1 as this, you are going to hear from police officers.

2 What the law says is that jurors have to
3 treat police officers just like any other witness. You
4 can't give them kind of a headstart or an automatic leg up
5 just because they walk in wearing a badge and a gun. Once
6 they start testifying, if they are credible, you know, you
7 can go with them. If they are not, then disbelieve them.
8 You just can't automatically start them off at a higher
9 level of credibility, just because they are a police
10 officer. Does that make sense to you?

11 A. Yes.

12 Q. Sometimes in these type cases one or both
13 sides may call like a mental health professional,
14 psychiatrist, psychologist, that type of thing. It's pretty
15 common in these cases. Again, the law wants jurors to keep
16 that open mind. Some people tell us, you know, they don't
17 believe in that type stuff. They think it's voodoo. Or if
18 you find some doctor and that you pay them enough, you will
19 get them to say anything. They disregard it totally. The
20 opposite side of that is people who think these people walk
21 on water. Every word out of their mouth is golden. We
22 don't want those people.

23 We want the people kind of in the middle,
24 just like police officers, start everybody out with that
25 same level of credibility and judge them based on what they

1 have to say. Does that make sense to you?

2 A. Yes.

3 Q. Is that something that you think you can do?

4 A. Yes.

5 Q. Being an RN, how would you feel if you had
6 psychiatric testimony, doctors as expert witnesses? Do you
7 think that might affect you in any particular way or --

8 A. Um --

9 Q. Just kind of depends on what they have to say?

10 A. I think it depends on what they have to say.

11 Q. You could keep that open mind, basically?

12 A. Yes.

13 Q. One way to look at this process is once you
14 find somebody guilty of capital murder, they are sitting on
15 a life sentence. Okay? And only if we prove yes, yes, and
16 no, as the answers, only then do you get the death sentence.

17 So let me talk to you just a second about
18 what a life sentence means, because people are concerned
19 about parole and you hear about parole laws. In Texas a
20 capital life sentence means that a person has to serve 40
21 years, 40 calendar years, day for day, before they become
22 eligible for parole. They may make parole the first time up
23 after 40 years and they may never make parole. They may
24 serve all their time in a real life sentence. You just
25 never know. It's beyond the control of anyone in this

1 courtroom.

2 And for those reasons we tell a jury what
3 a life sentence means, but then we ask you to assume that a
4 life sentence means life, that it really means life, you
5 know. We don't want somebody thinking, you know, 40 years,
6 that's long enough, so I'm not going to work through the
7 questions. I'm just going to answer them in such a way that
8 it gives them that life sentence or, conversely, we don't
9 want people thinking he's going to get out in 40 years.
10 That's not long enough. I'm just going to answer these
11 questions such that he gets a death sentence. Does that
12 make sense to you?

13 A. Yes.

14 Q. Do you think that you can assume that a life
15 sentence means a life sentence?

16 A. Yes.

17 Q. Another thing that we have to talk about. I
18 don't know if it would come up in this case, but sometimes
19 in the first phase of the trial a jury may find a person
20 guilty of what is called a lesser included offense.

21 Let me give you an example of what I
22 mean. You try somebody for a capital murder, murder in the
23 course of a robbery. You as a juror may have a reasonable
24 doubt about that murder, but you don't have any reasonable
25 doubt that they are guilty of, say, aggravated robbery.

1 At that time you may have the option to
2 find him guilty of aggravated robbery. If you did that,
3 then this kind of punishment scheme would go by the wayside
4 and the law would just ask you to look at what you hear in
5 the second phase of the trial and set that person's
6 punishment that you found guilty of aggravated robbery
7 somewhere between 99 years or a life sentence and five
8 years, from five years all the way up to 99 or life.

9 And it's kind of the same rule. We just
10 ask you to keep an open mind in that second phase. You may
11 hear something where you want to give somebody a life
12 sentence. And you may hear some facts and you may want to
13 give somebody -- think five years is the right thing to do
14 and give that.

15 But the bottom line is can you follow the
16 law and keep that open mind to the full range of punishment?

17 A. Yes.

18 Q. Do you have any questions of me? I have kind
19 of given you -- I bet you learned more law today than your
20 husband did.

21 A. Yes, probably.

22 Q. Any questions about anything we have gone
23 over?

24 A. I don't think so.

25 Q. Any -- are you more frightened now or less

1 frightened, now that we've talked about the process?

2 A. I think I'm less frightened now. I think I
3 know a little bit more what to expect.

4 Q. I think Mr. Shook was out of the room making
5 sure you don't argue with your husband at the end of the
6 day. We just get worried about those things, because I know
7 how I was in law school.

8 A. I can imagine. My husband said that I would
9 never get picked because he was in law school.

10 Q. Well -- it's too early to tell if he's going
11 to be right.

12 A. Yeah.

13 Q. Thank you for visiting with me and we
14 appreciate your time. That's all I have, Judge.

15 THE COURT: Ms. Busbee?

16 CROSS-EXAMINATION

17 BY MS. BUSBEE:

18 Q. Ms. Carney, I'm not going to maybe talk to you
19 as much as Mr. Wirskye, but I want you to talk to me.

20 A. Okay.

21 Q. Because when people come up here, I think he
22 told you this, but I'm going to tell it to you, too. We had
23 several thousand people and of those people you are juror
24 1183, but you are probably the 35th juror that we're taken
25 in order. So we were tossing out people right and left.

1 And we hone that down to people who are reasonable based on
2 the questionnaires and that we thought might make a good
3 juror.

4 So you are not being examined as to
5 whether or not you are reasonable or you follow the law.
6 We, obviously, pretty much already decided that or we
7 wouldn't be wasting your time. But you're a human being and
8 you pointed out at the very beginning of this procedure that
9 a death penalty case is, in fact, it's an extraordinary
10 procedure. It's not like anything else we do, hence, the,
11 for lack of a better term, I'm sure you will agree with me,
12 grilling of people that may sit on our jury. It doesn't
13 happen any place else.

14 But then this is -- this can't help but
15 be a personal type of -- it evokes strong emotions and on
16 both sides it evokes strong emotions because someone has
17 been killed and it evokes strong emotions because someone
18 may die. And so you get to say how you feel about things.

19 I think you were asked a lot of times
20 does that make sense? Well, yeah, our laws, hopefully they
21 do make sense and make sense to you, since we, obviously,
22 think you are reasonable and rational and intelligent enough
23 to go through the process.

24 But what I would like to know, yes, that
25 is reasonable. However, I would like to tell you this is

1 how I feel about it, okay? Because you made some comment
2 about, well, if I'm going to support the death penalty, I
3 would have to be able to engage in the process. But I don't
4 think anybody here would hold you to that burden. It's not
5 like you have been drafted and you have to do it because you
6 said you support the death penalty. You don't.

7 We've got -- we've had lots of people in
8 front of you and we'll have lots of people behind you. If
9 for some reason one side or the other, just based on your
10 own personal experiences and beliefs, you have a problem
11 with any of the things that you will be asked to do in this
12 case, or you have made your, you know, you have feelings
13 that would affect you and you can't set it aside, lots of
14 folks do.

15 So you can tell me and it's not like you
16 are a bad citizen or you don't support the death penalty in
17 the proper case. It's just that like the majority of
18 people, you might not be the right juror on this case or you
19 might be. But I'm not going to know that until you tell me
20 how you feel.

21 So let me just ask you some background
22 information, having prefaced it with all that.

23 A. Okay.

24 Q. I saw and you kind of rolled your eyes about
25 what your husband had instructed you this morning. Would

1 you feel embarrassed to sharing some of that with us so we
2 can get a giggle or be so amazed that he's so smart?

3 A. Um, exactly what he wanted me -- what he said
4 that y'all would want?

5 Q. Tell me what he's told you about coming down
6 here.

7 A. Um, well, I guess he didn't have as much time
8 being worried about me as I wanted him to have. He started
9 interviews today. He has three interviews today for summer
10 internship. So I've been kind of worried about this for the
11 last two weeks and I keep trying to express that to him and
12 he hasn't really been listening, so --

13 Q. That happens.

14 THE COURT: You have been married one
15 year?

16 PROSPECTIVE JUROR: One year. He's very
17 stressed, though, right now.

18 Q. (By Ms. Busbee) At least you are not both
19 lawyers married to each other, which we have right here,
20 boy. Okay. Well, what's going through your mind? What
21 kind of -- you said that -- that's a dumb question. You
22 said he said they wouldn't pick you?

23 A. Uh-huh.

24 Q. And he knows you. Why does he think they
25 won't pick you?

1 A. Just because he's in law school.

2 Q. Oh, oh, oh.

3 A. That's why he said they wouldn't pick me.

4 Q. Well, he thinks he's pretty important, doesn't
5 he?

6 A. He does, I guess.

7 Q. And that would be of some concern if we
8 thought he was going to be trying to give you other law,
9 which I doubt, or that we thought that you were going to
10 take his opinion over what you are told in court, which I
11 don't believe at all. So I'm comfortable with that.

12 The funny thing about this is we ask you
13 all these questions about the death penalty and just wear
14 you out asking you your opinions about your feelings and
15 stuff without giving you any idea of what the law is. And
16 so now you know what the law is and you have obviously been
17 fretting about it or thinking about it.

18 The way that this is in Texas at this
19 point, would this be the way you would do it, if you were
20 going to devise a scheme where some people might be eligible
21 for a death sentence?

22 A. Um, well, I guess I don't have as much
23 experience as y'all do with the law, so I really don't know
24 if this is the way that I would do it or not. I just kind
25 of am going with the thought that this is the way that we

1 have decided is the proper way. So it must be the best way.

2 Q. Right. Except that going back to what I said
3 before, we ask people to do something extraordinary and so
4 they have a right to say, you know, that's not the way I
5 would devise a scheme for society killing somebody or giving
6 the death penalty.

7 So if that's the case, you can tell us,
8 because we don't want to put anybody in an uncomfortable
9 position, either way that cuts. We just kind of like to
10 know your thoughts on it.

11 A. Um, it seems like an okay way to go about it
12 to me.

13 Q. That's kind of careful.

14 A. Yes.

15 Q. I notice that your father practiced medicine
16 and your mother is a nurse or at least he did practice
17 medicine. What kind of medicine did he practice?

18 A. He's a family practitioner. He's been retired
19 for about 12 years now, though.

20 Q. And much happier no doubt?

21 A. Yes, he plays golf every day.

22 Q. I was going to ask you that. And that's
23 great. I'm sure he worked real hard. Did he ever discuss
24 or your mother ever discuss anything having to do with their
25 opinions about the death penalty?

1 A. Um, no. My family, my mother and father
2 weren't ever very political or didn't really ever discuss.
3 I don't even know what their opinions are, actually.

4 Q. Um, you have mentioned in your questionnaire
5 something about you didn't want to see gruesome details or
6 be concerned about seeing gruesome details, pictures, or
7 hearing things about a murder. And, you know, without going
8 into the facts of this case, that's often what happens in a
9 murder case. Obviously, there's going to be exhibits and
10 photographs and that sort of thing involving the murder. Do
11 you think that sort of thing would distress you?

12 A. Um, no. I don't remember putting that,
13 actually, but maybe I did. I work in a place where I see
14 stuff like that, blood and stuff, all the time, so --

15 Q. I figured that.

16 A. I don't know why I put that.

17 Q. Maybe I misspoke. You said it would be
18 disturbing to hear facts relating to someone's death.

19 A. I think that I meant that it would be
20 disturbing for me to have to decide whether someone lived or
21 died.

22 Q. And that's fair enough, because if it wasn't
23 disturbing we'd be worried about that at this table. Okay.
24 Let's go back and ask you these things. Let me hear what
25 you have to say. I'm just asking this in general and I'm

1 not going to ask you this having to do with, you know, I
2 went into the First National Bank and shot Mr. Sanchez or
3 anything like that.

4 But, in general, how do you feel about
5 the death penalty for an accessory?

6 A. Um, I think that an accessory should, can be
7 given the death penalty because they had to have thought or
8 in some -- some -- how can I word this? If they are putting
9 themselves in that situation with those people with guns and
10 they're going to go rob a bank or whatever, then they should
11 maybe expect that someone was going to die. So I think,
12 therefore, they should possibly be considered for the death
13 penalty.

14 Q. Okay. And I think that when explaining that
15 to you, Mr. Wirskye did, that when you are deciding if
16 someone is guilty, understanding these are definitely two
17 trials, someone is guilty, we would have made a
18 determination that they should have known. And that's how
19 you find them guilty. Guilty not because they did it, but
20 they should have known, which is kind of an iffy sort of
21 thing. Can't say for sure, but a reasonable person would
22 have known that that might happen.

23 Now, and finding, then, that person is
24 convicted and they have a life sentence and the law favors a
25 life sentence. It's -- it's an uphill climb to get a death

1 sentence in any capital murder case, including one involving
2 a party to an offense.

3 So talk to me about how you feel about
4 Special Issue No. 1, not whether or not it makes sense, but
5 this question about a probability of future dangerousness.

6 A. Um, if I felt that someone could commit such a
7 crime again or would be a threat to, say, people that I know
8 or even people that I don't, then I think that I would have
9 to agree with No. 1.

10 Q. Okay. And would you, having found someone
11 guilty of capital murder, is that good proof to you by
12 itself that someone may be a danger in the future?

13 A. No, not only that they just committed that one
14 murder. I don't think that they -- that would definitely
15 mean that they would always be a threat to society.

16 Q. I mean, obviously it probably would depend on
17 the facts, because some cases are just so heinous and some
18 aren't. And so would you require -- in a case that, you
19 know, maybe wasn't heinous, would you require the State to
20 prove that to you beyond a reasonable doubt that you felt
21 beyond a reasonable doubt there was a probability that there
22 would be future dangerousness?

23 A. Yes. They would have to prove that to me.

24 Q. Okay. Now, here's the sticking point for some
25 people and I need to ask your honest opinion about this. On

1 Special Issue No. 2 we don't ask about whether someone
2 anticipated a life would be taken, if they were the person
3 who took the life, because that would be kind of nutty.
4 That's already been decided, actually decided, that they did
5 it.

6 But in Texas if someone is a party and
7 the State seeks a death penalty against a party, the jury
8 has to do something and make a decision beyond a reasonable
9 doubt not only that they should have, that's kind of a
10 reasonable man's determination, but they have to say beyond
11 a reasonable doubt that that person did anticipate, did
12 anticipate. It says anticipate. But the meaning of the
13 word is did actually anticipate that a life would be taken.

14 Can you tell me how you think, how you
15 feel, about that Special Issue and what you would want to
16 hear on that point?

17 A. Um, did they discuss killing someone before
18 they went in?

19 Q. See, that's the thing. We can't talk to you
20 about what may or may not be proved in this case. That's
21 against the law. So it's kind of -- I know it's not fair,
22 but would you need to hear that, since you brought it up,
23 would you want to hear what the planning --

24 A. That's what I mean, did they discuss it before
25 they went and committed the crime that possibly people would

1 be killed?

2 Q. Well, you may not get to know that. You know,
3 just -- it may be something that you have to decide without
4 knowing what the perpetrators did prior to the -- prior to
5 the event. Sometimes that's just not available. Would you
6 be able to make that decision without knowing that?

7 A. Um, I'm not sure.

8 Q. Okay. Well, let me just -- you're acquainted
9 with and I hear that you are fine with the concept or the
10 constitutional provision that says that no one be required
11 to testify or on trial or incriminate themselves or say a
12 word when they're a criminal defendant. And which, I think
13 what you are saying is, I would like to hear from someone
14 who could tell me how the planning occurred, but that might
15 not be available because the State can't drag people up
16 there and make them talk.

17 So if that wasn't available, what would
18 be your feelings about deciding that question?

19 A. Um, I'm not really sure. I think, I mean,
20 they would have to somehow sway me using something, whether
21 it was how they planned it or the fact that they didn't plan
22 it. Both of those would be swaying factors. Someone is
23 going to have to give me some sort of evidence.

24 Q. Of course, we've all thought through how this
25 scheme works, but we get you up there and make you nervous

1 anyway and then grill you some more.

2 But here's my concern. Jurors want to do
3 the right thing, obviously. And a hypothetical juror, say
4 you are the juror on a hypothetical case, has found someone
5 guilty beyond a reasonable doubt and said, you know, a
6 reasonable person would have anticipated this, so he should
7 have anticipated that, so I find that beyond a reasonable
8 doubt. Then, the second question is, well, I don't -- I
9 haven't heard from the defendant, so I'm just going to
10 assume that he anticipated, because he should have
11 anticipated it.

12 I'm just trying to figure out what else
13 you need to hear or if you would need to hear anything else
14 in order to answer Special Issue No. 2, yes, they did intend
15 or did anticipate.

16 A. I don't know what I would need, but I would
17 need something.

18 Q. Let me ask you this. In all honesty would you
19 want to hear from the defendant? You don't have to, but
20 would you feel like the defendant would need to tell you
21 that he hadn't anticipated that?

22 A. No. I don't think it would have to come
23 straight from him.

24 Q. It would have to come from some facts?

25 A. Right.

1 Q. That's fair enough because we're not talking
2 about the actual facts as lawyers want to be, as you know,
3 because now you are married to an advocate. That works.
4 Okay.

5 Last question on these Special Issues.
6 What about this mitigation, this business about, well, okay,
7 he's dangerous beyond a reasonable doubt, he knew somebody
8 was going to be killed, and he's guilty of capital murder,
9 in reality, is there anything that would make you answer
10 that last question, no, I don't want to give him the death
11 penalty having found these other things to be true beyond a
12 reasonable doubt?

13 A. Yes.

14 Q. Okay. Am I reading you, saying that you would
15 be reluctant and make the State prove its case to you and
16 all these Special Issues beyond a reasonable doubt?

17 A. Yes.

18 Q. I'm going to give you, you know, the accused
19 in this case gets a safety valve, so I'm going to give you
20 one. We don't want anybody on this jury who genuinely
21 doesn't want to be on it. Is there anything else that you
22 want to share with us, the Judge, or the State, anybody,
23 your thoughts on serving on this jury?

24 A. Um, no, I'm really not looking forward to it.
25 I mean, I don't think -- it's going to be hard, but I think

1 that we all have responsibility to do this, if we're called
2 upon to do it, so --

3 Q. Okay.

4 MS. BUSBEE: I have no more questions of
5 this juror.

6 THE COURT: Ms. Carney, if you would, be
7 so kind and wait for us outside and we'll have you back in,
8 in just a few minutes.

9 [Prospective juror out]

10 THE COURT: What says the State?

11 MR. WIRSKYE: State has no challenge for
12 cause.

13 MS. BUSBEE: We have no challenge for
14 cause.

15 MR. SHOOK: State accepts.

16 MS. BUSBEE: We need to talk.

17 THE COURT: You may step into your
18 office.

19 (Recess)

20 MS. BUSBEE: Defense will accept this
21 juror.

22 THE COURT: Defense accepts. Ask Ms.
23 Carney to come back in, please.

24 [Prospective juror in]

25 THE COURT: Thank you. You may be

1 seated. Ms. Carney, I will inform you that you have been
2 accepted to sit on this jury. And that just reinforced the
3 people of most first-year law students, they don't know very
4 much. They are more dangerous than anything else. You can
5 share that opinion with your husband. That's about as far
6 as I'm going to let you go with this.

7 This is probably going to test his
8 ability to be a lawyer. Part of being a lawyer, you have to
9 be able to communicate with a client and not reveal those
10 communications. So if he needs to hear it from me, I'll be
11 happy to have him come down here and I'll tell him. But I
12 believe you can do the job.

13 The Judge has instructed me I cannot talk
14 to you about this case, period. Don't let him do any
15 research on capital punishment, capital murder. Don't you
16 do any. Don't look at the Internet or anything, read
17 stories or anything to do with this case, because you have
18 taken an oath today to render -- I mean, to tell us the
19 truth. You will take an oath when you are in here on the --
20 when we start the case that you will base your verdict on
21 the law and the evidence presented to you, so help you God.
22 And that comes from that witness stand right there.

23 PROSPECTIVE JUROR: Okay.

24 THE COURT: So I can't stress that
25 enough. We don't need a shadow juror telling you what's

1 going on because you are smart enough and intelligent
2 enough, and as Ms. Busbee said, you have the mental acuity,
3 toughness, to be able to say, yes, I can follow the rules.
4 That's why they put you on this jury. So that's the warning
5 from the Court. I'm going to provide you with written
6 instructions --

7 PROSPECTIVE JUROR: Okay.

8 THE COURT: -- that says basically the
9 same thing, but a lot more detailed. I'm not going to read
10 it to you. I have a supplemental sheet. This is the
11 information retained in my computer. This is contact
12 information maintained by me and the Sheriff. So I will
13 have you go with the Sheriff in a minute and you will fill
14 this out. As you heard, I was on the computer all the time.
15 I'm taking notes. And that's where we come up with all
16 these documents. I'm a computer geek and I know that. But
17 I'm always on the computer, always taking notes. I can tell
18 you what's going on at any given minute in a trial.

19 So what happens from this point forward,
20 at some point before November 10th and I don't know, it will
21 hopefully be a week, ten days, before November 10th. I
22 don't know what day it will be. We'll have -- once I get
23 all the people that will be on this jury, we will have
24 everybody back down here and there are certain things I
25 can't do until I get everybody in the room.

1 At that point we will have about an hour
2 of additional orientation to go through with the group. The
3 reason we do that, we found, just like when you came in
4 today, initially you were very nervous. Your pressure goes
5 down just a little bit. That will be the same way you come
6 in on orientation. There will be a bunch of strangers, but
7 you will all be in the same position, having to make a
8 decision.

9 So we get that out of the way. The
10 reason we do that is so on Monday morning on November 10th
11 at 8:30, you will be in that box and the State will start
12 their case. It's not come down at 8:30 and, you know, the
13 Court, we jerk around for a couple of hours and finally get
14 you in and then take a break. Okay? You have heard about
15 how bad that can be. Not in this court. All right?

16 As far as work, an admonition for your
17 coworkers, you would have to allow your supervisors to
18 schedule you away from your work for these two weeks.
19 So, obviously, you are going to need to tell them, I'm going
20 to have jury duty for two weeks beginning on November 10th.
21 Please schedule me accordingly.

22 Now, you will be able to use the phone
23 during the day. We will bring in lunch. You will be able
24 to communicate during the day, if you need to do that. We
25 work normal business hours, so if you have to go by the

1 hospital in the evening for any reason, you can do that.

2 That will not be a problem.

3 You will not be sequestered, but only if
4 a jury is out and unable to reach a verdict at the end of
5 the day. But that's at the end of the trial. So during the
6 trial, you won't be sequestered. You can go home. Do you
7 have any questions of me?

8 PROSPECTIVE JUROR: No. So just tell my
9 supervisor it's going to be for two weeks?

10 THE COURT: Tell them two weeks, Monday
11 through Friday. So you can work the weekends, if you
12 normally do, but I need you Monday through Friday for two
13 weeks, hopefully not that long. But that's what you need to
14 block out.

15 So if you will, go with the Sheriff and
16 she will have some additional information for you.

17 [Prospective juror out]

18 THE COURT: Let the record reflect that
19 juror No. 6 has been retired. And, Ms. Busbee, you have an
20 objection you wanted to put on the record?

21 MS. BUSBEE: Yes, Your Honor. I'm going
22 to object and I think in an abundance of fairness to the
23 State, I would like to make a written request for a running
24 objection. But I will state it into the record at this time
25 and I'll submit that in a written form to you tomorrow in

1 the morning.

2 But my objection to the question asked by
3 the State on voir dire is that it's a hypothetical question
4 which sets forth facts which are so detailed, includes facts
5 that may have to be decided in the case at bar, requires a
6 commitment from the juror and it's a commitment on a
7 question that's not really a mindset that's necessary for a
8 challenge for cause.

9 In other words, I think the Court is
10 aware that the Court of Criminal Appeals is leery of
11 questions containing facts, hypotheticals, asked of jurors,
12 unless they directly -- the answer would result in a
13 challenge for cause or reason to make the challenge for
14 cause.

15 The questions that are asked having to do
16 with peremptory challenges, the case law seems clear that
17 these facts that are -- the detailed facts included in
18 questions having to do with peremptory challenges are not
19 allowed. And the series of questions that the State has
20 asked this juror and has asked most jurors previously in
21 selecting this jury have set forth facts that are
22 impermissible under the law.

23 And I'm going to ask -- I know the Court
24 granted my objection on the basic tender of it on this
25 juror, but I would like to have a running objection based on

1 that.

2 THE COURT: Yes, ma'am. I did sustain
3 the objection and the State knows they have to be careful.
4 But, also, as well as you know, when you get a nonlawyer on
5 the jury and you try to explain parties to them, they don't
6 understand it by any stretch of the imagination. And they
7 need to provide some guidance as to what a party may or may
8 not be, just the same as so many opinions are, if they're in
9 for a penny, they're in for a pound, even though they did
10 nothing.

11 So they have to distinguish between mere
12 presence alone is not sufficient to sustain a conviction,
13 but also include some culpability. So I have to allow some
14 discretion in explaining the law.

15 I agree with you that they need to stay
16 away from a fact pattern that even gets close to resembling
17 what we have here. So it's obviously a case-by-case
18 interview. It depends on what these people are giving us
19 back. I agree with you that they are getting too detailed,
20 too specific. Please object and I will shut that down.

21 [End of Volume]

1 STATE OF TEXAS *

2 COUNTY OF DALLAS *

3 I, NANCY BREWER, Official Court Reporter for the 283rd
4 Judicial District Court, do hereby certify that the above
5 and foregoing constitutes a true and correct transcription
6 of all portions of evidence and other proceedings requested
7 in writing by counsel for the parties to be included in this
8 volume of the Reporter's Record, in the above-styled and
9 numbered cause, all of which occurred in open court or in
10 chambers and were reported by me.

11 WITNESS MY OFFICIAL HAND on this the 4 day of

12 March, 2004.

13
14
15 Nancy Brewer
16 NANCY BREWER, CSR, NO. 5759
17 Expiration Date: 12-31-04
18 Official Reporter, 283rd JDC
19 Frank Crowley Crts. Bldg. LB33
20 133 No. Industrial Blvd.
21 Dallas, TX 75207
22 (214) 653-5863
23
24
25

74851

REPORTER'S RECORD

VOLUME 15 OF 61 VOLUMES

TRIAL COURT CAUSE NO. F01-00328-T

STATE OF TEXAS * IN THE DISTRICT COURT
VS. * DALLAS COUNTY, TEXAS
PATRICK HENRY MURPHY, JR. * 283RD DISTRICT COURT

INDIVIDUAL VOIR DIRE

FILED IN
COURT OF CRIMINAL APPEALS

MAR 9 - 2004

Troy C. Bennett, Jr., Clerk

On the 11th day of September, 2003, the following
proceedings came on to be heard in the above-entitled and
numbered cause before the Honorable Vickers L. Cunningham,
Sr., Judge Presiding, held in Dallas, Dallas County, Texas.

Proceedings reported by machine shorthand.

ORIGINAL

A P P E A R A N C E S

APPEARING FOR THE STATE

Mr. Toby Shook
SBOT NO. 18293250
And
Mr. Bill Wirskye
SBOT NO. 00788696
Assistant District Attorneys
133 No. Industrial Blvd.
Dallas, Texas 75207
Phone: 214/653-3600

APPEARING FOR THE DEFENDANT

Ms. Brook Busbee
Attorney at Law
SBOT: 03488000
703 McKinney Ave. Ste. 312
Dallas, TX 75202
214/754-9090

Mr. Juan Sanchez
Attorney at Law
SBOT: 00791599
5630 Yale Blvd.
Dallas, TX 75206
214/365-0700

PROSPECTIVE JUROR INDEX

<u>PROSPECTIVE JUROR</u>	<u>CRT.</u>	<u>STATE</u>	<u>DEFENSE</u>	<u>VOL.</u>
Virginia Farr	4	5		15
Margaret Johnson	18	20		15
Timothy Yancey	77	80		15
David Karwoski	89	90		15
Victoria Thompson	103	106		15

P R O C E E D I N G S

THE COURT: Call in our first juror.

[Prospective juror in]

THE COURT: Good morning. Please have a seat. How are you?

PROSPECTIVE JUROR: Fine.

THE COURT: We have Virginia Ruth Farr; is that correct?

PROSPECTIVE JUROR: Uh-huh.

THE COURT: I appreciate you being here on time. I bet you didn't think we would start on time, did you?

PROSPECTIVE JUROR: Well, no.

THE COURT: I try to break the expectations sometimes. We get here and we go to work. Did you have enough time this morning to review the guide I provided to you?

PROSPECTIVE JUROR: Yes, I did.

THE COURT: Also provided you a questionnaire that you filled out in May. The objective this morning is for you to be able to understand the law. I know I gave it to you in writing. There's a lot of it. You need to understand how it relates. The attorneys will go over the law in more detail, give you examples, and try to help you understand how it works.

1 At the end of the program here I have two
2 questions to answer. One is do you understand the law? Two
3 is can you follow the law? That's my job. That's the
4 ultimate question.

5 Before we begin, do you have any
6 questions about what you have read thus far?

7 PROSPECTIVE JUROR: No.

8 THE COURT: Will you be able to serve
9 this Court beginning November 10th for two weeks?

10 PROSPECTIVE JUROR: Yes.

11 THE COURT: I'll turn it over to the
12 State. Mr. Shook?

13 MR. SHOOK: May it please the Court.

14 VIRGINIA FARR,
15 having been duly sworn, was examined and testified as
16 follows:

17 DIRECT EXAMINATION

18 BY MR. SHOOK:

19 Q. Ms. Farr, my name is Toby Shook. I'll be the
20 prosecutor speaking to you this morning. You have been on a
21 civil case before, I believe; is that right?

22 A. Right.

23 Q. What did that case involve?

24 A. I don't remember. It's been a while.

25 Q. Okay. You have been -- you have never been

1 down on a criminal case, though?

2 A. On criminal? No.

3 Q. Because this is a death penalty case, we talk
4 to each juror individually and I know that it makes some of
5 the jurors a little nervous.

6 A. Right.

7 Q. They feel like they are the ones on trial.
8 But it's the procedures that are prescribed by law. It kind
9 of works pretty good. We just want your honest opinions.
10 If you have any questions at any time, feel free to ask.

11 You have been very helpful in your
12 questionnaire, given us a lot of information. I want to
13 follow up on a couple of things. One thing I noticed, you
14 know, we call so many people down and we talk to more and as
15 I read in your questionnaire this morning, I saw the name
16 Frankie Freeland. And we talked to Frankie Freeland last
17 week.

18 A. Yes.

19 Q. Is that the same Frankie Freeland?

20 A. She's my roommate, yeah.

21 Q. That's quite a coincidence.

22 A. Yeah. We couldn't believe we got called at
23 the same time.

24 Q. And y'all came down on the same day and filled
25 out the questionnaire and everything?

1 A. Yes, we did.

2 Q. Did you have any discussions about what Ms.
3 Freeland went through last week?

4 A. I just asked her, you know, what you asked.

5 Q. Okay.

6 A. I didn't know we had to sit up here.

7 Q. She didn't tell you that?

8 A. Right.

9 Q. Tell us kind of what you know about the case.
10 Everyone has heard a little bit about it, so we always
11 explore that with the jurors, what they remember about the
12 case when it first came out or what they followed since
13 then.

14 A. I just remember when it happened and it was
15 very bad. And I think -- I don't know. I was trying to
16 keep up with the others that were involved. I think they
17 have all been sentenced, right?

18 Q. Did you follow some of these cases or read --

19 A. Just read.

20 Q. -- in the newspaper? Okay. What we do with
21 each juror, because they have all read and seen something
22 different, we want to ask them if that has influenced them
23 in any way. Because, obviously, the fact that you have read
24 something doesn't necessarily disqualify you as a juror.
25 The test is this. Whether what you have read has influenced

1 your verdict in any way.

2 Because the rule is, obviously a jury has
3 to make its decision just based on what they hear in the
4 courtroom. But only you can tell us that. You know, some
5 people have made up their mind or have an opinion that might
6 influence them. Other jurors who have read or seen it on
7 TV, tell us, no, I can follow the rule of law. That stuff
8 wouldn't influence me.

9 But someone that's followed it a little
10 more than others, we want to make sure how you feel about
11 that and if you would be able to follow that particular rule
12 of law or would you be influenced somewhat? But only you
13 can tell us.

14 How do you feel about that particular
15 area of the law?

16 A. Well, I think when you read something like
17 that, you are naturally going to form some kind of opinion.
18 However, you know that all the facts aren't there.

19 Q. Right.

20 A. So I'm still open. I mean, you know, I didn't
21 know anything concrete.

22 Q. Okay. So you don't think anything you have
23 read or heard would influence you in your decisionmaking
24 process, if you were seated on the jury?

25 A. Well, I think it does somewhat, but not -- you

1 know, I would have to hear it all.

2 Q. When you think it does somewhat, what do you
3 mean? What do you --

4 A. Well, I don't think you get all the facts, you
5 know.

6 Q. Right. I think you are right there. That's
7 kind of a common sense deal.

8 A. Right.

9 Q. Obviously, the news folks may not get all the
10 facts or may not get their facts right.

11 A. True.

12 Q. And that's why the law is you would have to
13 wait and make your decision just on what you hear in the
14 courtroom and you couldn't let that other stuff, anything
15 you have read or seen on TV influence you in any way. Do
16 you feel that you can do that?

17 A. No, I think I could do okay.

18 Q. Okay. All right. Tell us, you put on your
19 questionnaire that you are in favor of the death penalty and
20 that you believe people should be held accountable for their
21 actions. Tell us why you favor the death penalty, the
22 purpose you think it serves society.

23 A. Well, I feel if you -- you have choices to
24 make and if you make the wrong choice, then you should know
25 you are going to be accountable for whatever happens during

1 that time. And I think if it's -- you made that choice
2 yourself, placed yourself there, then, yes.

3 Q. What types of crimes from your personal point
4 of view do you feel should be eligible for the death
5 penalty?

6 A. Murder.

7 Q. Okay.

8 A. Definitely murder.

9 Q. Any other crimes other than murder?

10 A. No.

11 Q. Is there any particular type of murder case
12 that comes to mind that you think would be appropriate, any
13 particular victim or how the crime was carried out or
14 anything like that?

15 A. No. Of course, we all watched O. J. and that
16 kind of stuff. But, you know, I don't feel like it's always
17 fair. But like I say, it would depend on if they made that
18 choice themselves, if they placed themselves in that
19 position.

20 Q. In Texas capital murder is reserved for just
21 in murder cases, one that is not self-defense or accident,
22 but an intentional killing and plus some other aggravating
23 fact, a murder that occurs during the course of a felony,
24 such as robbery. You go into a 7-Eleven and you murder the
25 clerk, that could be a capital murder case. You break into

1 someone's home during a burglary and murder them, that could
2 be a death penalty case. Murder during an arson, during a
3 rape, during a kidnapping, those types of cases can be
4 eligible for the death penalty in Texas.

5 Also, murder of a police officer and
6 fireman on duty, murder of a child under the age of six,
7 those are death penalty cases. And then murder for hire,
8 you do it for money or profit or murder of more than one
9 victim in the same transaction. But those are the types of
10 cases that are reserved for the death penalty, for
11 consideration of the death penalty.

12 Do you agree with those types of cases
13 from your personal point of view?

14 A. Yes, I do.

15 Q. Okay. Another area I want to go into is what
16 we call the law of parties or accomplices. Sometimes more
17 than one person commits capital murder, groups of
18 individuals that go in, and they have different roles, some
19 more prominent than others. The law says if you are
20 actively participating in a crime, you can be held
21 accountable for it, even if you are not the most active
22 participant.

23 In a capital murder case, you may have
24 one person that actually commits the murder, but several may
25 have helped carry out the crime. And the law says that they

1 can all be held responsible. An example we often give is a
2 bank robbery. Mr. Wirskye and I decide to rob a bank and I
3 have got the gun, but he's got a bag and we have another
4 friend who has got a car. And we all agree to commit the
5 crime together and he knows we're going to commit it.

6 The plan is for me to go in with a gun
7 and threaten everyone and Mr. Wirskye will come in and take
8 the money up, and our friend who waits outside with the car
9 running so we can make a getaway and warn us if the police
10 come.

11 We execute that plan. And in the middle
12 of it, maybe I shoot a teller, maybe Mr. Wirskye warns me
13 that an alarm is going to go off and I shoot the teller. I
14 can be arrested and prosecuted. I could receive the death
15 penalty. But the law says that Mr. Wirskye could, too, and
16 the getaway driver, depending on the facts and how actively
17 involved they are.

18 But people feel differently about that.
19 And we want to get your honest opinions on it. You know,
20 some people are fine with the death penalty, if it's being
21 prosecuted and sought against the actual killer or the
22 person who pulls the trigger. They're not okay with it with
23 an accomplice, and they feel that usually a severe
24 punishment or prison time, but not the death penalty, and
25 they would kind of draw a line there personally. Other

1 jurors are fine with it.

2 How do you feel about the law of
3 accomplices, a person being tried for the death penalty in
4 those situations?

5 A. I still say that if you intentionally put
6 yourself in that position, then you are guilty. I mean, and
7 you are part of it.

8 Q. Okay. So you are fine with that particular
9 aspect of the law?

10 A. Yes, yes.

11 Q. All right. Then you also know from living
12 here in Texas that the death penalty is a law that is
13 actually carried out. You know, there are some states that
14 have it on the books and they even prosecute it, but they
15 may never execute anyone. But, you know, in Texas that,
16 obviously, those executions do take place.

17 It's our goal in this case that -- and we
18 believe that we can convince a jury that the defendant is
19 guilty and we believe that we can convince them to answer
20 these Special Issues in such a way that would cause him to
21 be executed.

22 Are you familiar with the method of
23 execution in Texas?

24 A. Pardon?

25 Q. Are you familiar with the method of execution

1 in Texas?

2 A. Yes.

3 Q. Lethal injection? The procedures are the
4 same. They would be the same in this case. If he were
5 found guilty and sentenced to death, at some point in time
6 Judge Cunningham would give him a date of execution. On
7 that date, or just prior to it, he would be moved to
8 downtown Huntsville. He would be given an opportunity to
9 meet with his family and friends or a minister and given an
10 opportunity for a last meal.

11 But at 6:00 p.m. all executions by law
12 take place. There are witnesses there, you often read
13 about, from both sides, the victim's family, the defendant's
14 family. He's given a time to make a last statement which
15 almost always appears in the press.

16 But at the end of that statement, they
17 would inject him with lethal substances, substances which
18 shut down his lungs and heart immediately. And I think you
19 realize that this happens several times a year, sometimes as
20 many as 40 times a year in Texas.

21 And that is our goal. You have told us
22 that from your personal point of view you believe in the
23 death penalty. You believe it should be prosecuted. And
24 now that you have gone through this process and going
25 through this process, it often gives jurors time to pause

1 and kind of reflect on how they really feel about it a
2 little further when they realize they could be actually
3 participating in this trial.

4 Do you feel that you could participate in
5 this type of trial and if the State did prove these things
6 to you beyond a reasonable doubt, that you could answer
7 these questions in a way, knowing that if you did, then the
8 defendant here would be executed some day?

9 A. Yes.

10 Q. Okay. Let's look at these Special Issues for
11 a moment. If you would take a moment to read Special Issue
12 No. 1.

13 A. (Prospective juror complies.)

14 Q. This question asks the jurors to make a
15 prediction about how the defendant will behave in the
16 future, if he's going to be a continuing danger to society.
17 Do you feel that you could answer that question if you were
18 given enough information?

19 A. Yes.

20 Q. What would be important to you?

21 A. Just -- well, I think No. 1, I mean, I don't
22 think that I would have any problem with it.

23 Q. You don't get to this question unless you have
24 found the defendant guilty, unless we have proven to you
25 beyond a reasonable doubt.

1 A. True.

2 Q. And then this is the first question that you
3 would answer in the punishment phase.

4 A. Uh-huh.

5 Q. I want to get your true feeling on this. Some
6 people tell us that if I -- once I have found the defendant
7 guilty of capital murder beyond a reasonable doubt, that
8 tells me all I need to know about question No. 1 and that's
9 the type of person that's going to be dangerous. They will
10 commit that type of murder and that question No. 1 will be
11 yes for me. It will be answered for me, if I get to that
12 beyond a reasonable doubt guilty of capital murder. A lot
13 of jurors tell us that.

14 Some other jurors tell us, no, that's not
15 necessarily true. You know, he may not be a continuing
16 danger.

17 The law is you would have to wait and
18 listen to any additional evidence and then make your
19 decision. Some jurors tell us, quite frankly, if I go all
20 the way beyond a reasonable doubt and found him guilty of
21 capital murder, that answers question No. 1 and I would
22 answer it yes based on that decision, once I make that
23 finding of guilt.

24 How do you feel about that in relation to
25 this question?

1 A. I feel it does, also, yes.

2 Q. That that answers the question?

3 A. Uh-huh.

4 Q. You seem to be pretty strongly in favor of the
5 death penalty and rated yourself a 10 and believe that
6 people should be held accountable. And is that what goes
7 into your feeling on question No. 1?

8 A. True.

9 Q. That if they are guilty, then they are
10 obviously going to be a danger to our society?

11 A. Yes.

12 Q. I appreciate your honesty on all that.

13 MR. SHOOK: Could we approach the bench
14 for a minute?

15 THE COURT: You pass the witness?

16 MR. SHOOK: Yes.

17 MS. BUSBEE: May we approach? We have an
18 agreement.

19 THE COURT: You have an agreement.

20 That's fine. Ms. Farr, we appreciate you coming down. The
21 first question I asked, do you understand the law? You
22 indicated that you do. The second is can you follow it.
23 And your opinions are such that you haven't demonstrated
24 that you can, and that's fine. We appreciate that.

25 You will not be seated on this jury, so

1 you can go back and talk about it over breakfast or dinner
2 this evening with Ms. Freeland.

3 PROSPECTIVE JUROR: Okay.

4 THE COURT: You can tell her you didn't
5 make the cut, either, so she shouldn't feel too bad. Thank
6 you very much. You are free to go.

7 [Prospective juror out]

8 THE COURT: Margaret Johnson.

9 [Prospective juror in]

10 THE COURT: Please have a seat.

11 PROSPECTIVE JUROR: Thank you.

12 THE COURT: Good morning, Ms. Johnson.

13 How are you?

14 PROSPECTIVE JUROR: I'm fine, and you?

15 THE COURT: A little nervous?

16 PROSPECTIVE JUROR: Very first time.

17 THE COURT: Just give you a few minutes.
18 Try to relax a little bit. Why everybody is standing up is
19 to show respect for you.

20 PROSPECTIVE JUROR: I appreciate that.

21 Thank you.

22 THE COURT: This is as informal a process
23 as we can have at this point. It's a whole lot better than
24 being stuffed in a room with 700 other people in the morning
25 and being told what, you know, what we're doing and then

1 here's a questionnaire. Please tell us your name, when you
2 were born, and what happened next.

3 You can see I provided a copy of your
4 questionnaire for you. Have you had an opportunity to go
5 over that?

6 PROSPECTIVE JUROR: Yes.

7 THE COURT: Did you have an opportunity
8 to go through the guide I provided for you?

9 PROSPECTIVE JUROR: Yes.

10 THE COURT: Best thing about this, there
11 are no wrong answers.

12 PROSPECTIVE JUROR: All right.

13 THE COURT: So there's really very little
14 to be nervous about. The process will be that the attorneys
15 will visit with you about the law and go through examples
16 and get your opinions in more detail over what you have
17 already provided for us.

18 PROSPECTIVE JUROR: All right.

19 THE COURT: So they are not trying to
20 trick you up. It's not -- you know, people look, you know,
21 sit up here, oh, I'm the focus of attention. We have to
22 make a record of everything that we say, so that's why we
23 put you up there and try to be somewhat personal.

24 PROSPECTIVE JUROR: Okay.

25 THE COURT: So just, okay. Only two

1 questions that I have at the end of the process will be,
2 number one, do you understand the law that we're talking
3 about and how it works?

4 PROSPECTIVE JUROR: Okay.

5 THE COURT: The second question I'll be
6 asking is once you understand the law, can you follow the
7 law?

8 PROSPECTIVE JUROR: All right.

9 THE COURT: That's my job here is to be
10 able to ask you those two questions. So, first, the State
11 prosecutors will ask you some questions and then the defense
12 lawyers will ask you some questions.

13 PROSPECTIVE JUROR: Thank you, Your
14 Honor.

15 THE COURT: All right. Mr. Shook?

16 MR. SHOOK: May it please the Court.

17 MARGARET JOHNSON,
18 having been duly sworn, was examined and testified as
19 follows:

20 DIRECT EXAMINATION

21 BY MR. SHOOK:

22 Q. Ms. Johnson, I'll be asking you questions on
23 behalf of the State. As the Judge said, there are no right
24 or wrong answers. We just want your honest opinions. Okay?

25 A. Yes, sir.

1 Q. We're going to ask you some questions from
2 your questionnaire. It was valuable information to us and I
3 want to do some follow-up stuff and talk to you about
4 capital murder, the death penalty, how you feel about that,
5 and some of the rules that apply in these types of cases.

6 A. Yes.

7 Q. From the questionnaire it looks like you have
8 been on a civil jury and it didn't reach a conclusion; is
9 that right?

10 A. Okay.

11 Q. What was that case involving?

12 A. It involved a family matter between a husband
13 and an ex-wife or ex-wife and ex-husband in regards to
14 visitation of their children. The gentleman, the father,
15 apparently tried to make some sort of side agreement and
16 then -- with the wife, and whether or not that was a valid
17 side agreement, even though it didn't go before the Court.

18 Q. Okay. Did that actually -- but you didn't
19 reach a conclusion in that case? They settled it?

20 A. The jury did not.

21 Q. But you have never been on a criminal case?

22 A. No, sir.

23 Q. One of the things -- and, obviously, a lot of
24 our questionnaire gets into some personal matters, but I
25 think you can understand why we need to ask some of these

1 things.

2 A. Certainly.

3 Q. But Peggy Railey was your high school music
4 teacher?

5 A. Yes, sir.

6 Q. So, obviously, you took great interest in
7 that?

8 A. Absolutely.

9 Q. Were you pretty close to her?

10 A. When I was in high school, yes, sir.

11 Q. And I think your sentiments about what
12 happened in Walker Railey's case mirror what a lot of people
13 feel about the case, obviously.

14 A. I would like to think so.

15 Q. Do you think that would affect you in any way
16 as a juror in a violent crime case?

17 A. No, sir.

18 Q. Okay. The other areas I wanted to ask you
19 about is your stepson has a pending aggravated assault case.
20 Is that a juvenile case?

21 A. Yes, sir.

22 Q. Okay. What is the status of that case?

23 A. We would like to know the same. Currently,
24 from what I understand, the Judge has ordered mediation.

25 Q. Okay.

1 A. And that was ordered back in July. Here it is
2 September, so --

3 Q. Nothing has happened on that yet?

4 A. No, sir. It is not resolved.

5 Q. I don't want to really get into too much of
6 the facts, obviously. You weren't a witness to any of the
7 facts, were you?

8 A. No, sir.

9 Q. Is that something that occurred at school or

10 --

11 A. After school hours.

12 Q. After school hours?

13 A. But on school property.

14 Q. What police agency is handling it?

15 A. Dallas.

16 Q. Dallas?

17 A. Yes.

18 Q. Again, do you think that would affect you in
19 any way?

20 A. No, sir.

21 Q. Okay. And then this telephone harassment
22 case, is that a pending case right now, too?

23 A. It is. Actually we go to trial tomorrow.

24 Q. Really? Down here?

25 A. Yes, sir.

1 Q. You will make a lot of trips down here.

2 A. It's been an interesting year.

3 Q. And that --

4 THE COURT: Whose trial is that tomorrow?

5 MR. SHOOK: Husband's ex-wife; is that
6 right?

7 PROSPECTIVE JUROR: That's correct. I
8 don't know which court it's in. I can refer to my --

9 THE COURT: I didn't want to mix up in my
10 mind, so excuse me.

11 Q. (By Mr. Shook) And what police agency is
12 handling that case?

13 A. Dallas.

14 Q. Okay. All right. And I take it that case
15 wouldn't affect you in any way?

16 A. No, sir. It's a misdemeanor.

17 Q. Okay. All right. I wanted to cover those
18 because they all looked like they were, except for the
19 Walker Railey, obviously, were pending and going on at this
20 time.

21 Let me ask you how you feel about the
22 death penalty. You put on the questionnaire that you favor
23 it as a law, but we always like to follow up and ask jurors
24 how they personally feel about it, why they favor it, the
25 purpose they think it serves society.

1 A. Well, I certainly think it's a deterrent to
2 crime to have the death penalty, so I do believe in the
3 death penalty.

4 Q. Okay. Have you always believed in the death
5 penalty since you were an adult?

6 A. Yes.

7 Q. When you think of what's an appropriate death
8 penalty case, what types of crimes do you think should come
9 up for consideration of the death penalty?

10 A. Well, as I stated on my questionnaire, I truly
11 think that heinous, willful, intentional crimes, abductions
12 where murder is involved.

13 Q. Okay.

14 A. Or the death of an individual is involved.

15 Q. We always ask jurors, obviously, this
16 particular case got a lot of coverage in the press.

17 A. Yes.

18 Q. You said that you had seen it on TV and the
19 newspaper?

20 A. Yes.

21 Q. What do you recall about this case that you
22 read or saw on TV?

23 A. What I recall is that it occurred at a
24 sporting goods store in Irving --

25 Q. Okay.

1 A. -- around Christmas time.

2 Q. All right. Did you follow the events after
3 the crime?

4 A. Yes, to the extent that individuals were out
5 and they were considered dangerous and everybody certainly
6 was on the lookout for individuals that might meet that
7 criteria that we were looking for at that time through the
8 media.

9 Q. Did you follow any of the news stories after
10 the arrest or any of the other court proceedings since that
11 time?

12 A. No, sir.

13 Q. Okay. Now, just because you have seen
14 something on TV or read it in the newspaper, doesn't
15 necessarily make you unfit to be a juror. Obviously if that
16 were true, we couldn't qualify any jurors in high publicity
17 cases. The bottom line is this, to be qualified as a juror
18 you have to be able to assure the Court that you wouldn't
19 let anything you have read or seen on TV about the case
20 influence you or have an opinion that would influence you.

21 We can't ask you to forget what you have
22 seen, obviously, but what the Court requires is jurors to
23 make their decisions in the case based solely on what they
24 hear in the courtroom from the witnesses, from the evidence
25 introduced at trial, and they can't let these outside

1 stories they have seen influence their decisionmaking.

2 And it really comes down to what the
3 juror tells us, if they have -- if they would be able to do
4 that. Different jurors have read different things, more
5 information than others, and some tell us they can't and
6 some tell us they can. And we just depend on your honesty
7 and how you feel about this particular case and what you
8 know about it and whether you can assure the Court you can
9 do that.

10 So I want to get that out up front. You
11 have read a little bit, seen a little bit on TV, do you
12 think that would influence you in any opinions on the case
13 or would you be able to make your decisions just based on
14 the courtroom?

15 A. I can make my own opinion based on the
16 information that's given me.

17 Q. Okay. Fair enough. Now, in Texas capital
18 murder is reserved for just murder cases and then only
19 certain types of murder cases. You have to have an
20 intentional killing with some other aggravating fact, murder
21 during the course of a felony, such as a robbery. A person
22 goes into a 7-Eleven store and shoots the clerk during the
23 robbery. That can be a death penalty case. During a
24 burglary, someone breaks in a house and murders someone in
25 the home. During a sexual assault, during a kidnapping, and

1 arson, those types of cases come under consideration for the
2 death penalty.

3 Also, specific victims, such as a police
4 officer on duty, fireman on duty, prison guard on duty, a
5 child under the age of six, come into consideration for the
6 death penalty. Murder for hire, some call it a hitman in
7 Hollywood, but someone murders someone for money or profit.
8 Someone hires someone to murder someone for money or profit,
9 could be that situation, as well as mass murderers who kill
10 several people in the same transaction or a series of
11 transactions, like a serial killer.

12 But those are the only types of murder
13 cases that right now can come into consideration for the
14 death penalty. We have a lot of brutal killings that don't
15 come into consideration. A person could get life. And
16 that's the structure of the law at this time.

17 Those types of cases I have gone over
18 with you, do you agree with those from your personal point
19 of view as those are the types of cases that you feel should
20 be considered for the death penalty?

21 A. Yes.

22 Q. Okay. The next area I want to go over is what
23 we call the law of parties. You know, when we think of a
24 capital murder, generally we think of an example of the
25 person actually causing the death, the triggerman, the guy

1 that goes in and shoots the clerk in the 7-Eleven.

2 But capital murder, like any crime, may
3 be carried out by several individuals. The law says that if
4 you are actively participating in a crime, you can be held
5 accountable for it and could be prosecuted, even if maybe
6 you are not the -- maybe someone else in the group
7 participated more.

8 Now, in a capital murder situation, you
9 may have someone that's caused the death, but he may have
10 accomplices that help him carry out the crime. An example
11 we give is Mr. Wirskye and I, let's say we want to rob a
12 bank and we come up with a plan. We recruit another friend
13 of ours who has a car.

14 What our plan is, I've got a gun and I'm
15 going to go in there and threaten the tellers, the bank
16 tellers. Mr. Wirskye is going to accompany me. He's going
17 to have a bag and he's going to load up all the cash while I
18 keep everyone at bay. Our other accomplice is going to keep
19 the car running outside, right at the curb. He's going to
20 have it ready to go. We're going to run out and he's going
21 to take off.

22 We execute the plan. And during the
23 course of the bank robbery, maybe the teller looks at me the
24 wrong way or Mr. Wirskye says one of them is going for the
25 silent alarm, and I shoot them, intentionally kill them. We

1 leave. But we're arrested.

2 I think it's clear under the law that I
3 could be prosecuted for the death penalty because I'm the
4 triggerman. The law says, though, under the facts, if
5 Mr. Wirskye and the getaway driver were actively
6 participating in this event, that they can be prosecuted for
7 capital murder and they could ultimately receive the death
8 penalty.

9 And people feel differently about that
10 aspect of the law when we talk about an accomplice, a
11 nontriggerman. Many people are for the death penalty and
12 want it prosecuted when we talk about someone who actually
13 causes the murder. Then when we talk about situations where
14 there's an accomplice involved, they kind of draw a line
15 there. They would reserve punishment for an accomplice,
16 maybe a long prison time, but not a death penalty. They
17 would reserve that simply for the triggerman. Other jurors
18 tell us they agree with the law and think those people
19 should be held accountable, too, and get the death penalty
20 in these situations, depending on their involvement.

21 And we just want to ask you what your
22 honest feelings are about that law, how you feel about the
23 prosecution of accomplices?

24 A. I have to agree with the law. I think as an
25 accomplice, if they know what they are walking into, they

1 need to be held accountable, just as everyone else in the
2 party.

3 Q. Okay. And you feel that they could even
4 receive the death penalty, depending on their involvement?

5 A. Yes.

6 Q. What would be important to you, then, about an
7 accomplice? What types of factors come to mind when you
8 think in a capital murder situation with the death penalty
9 involved?

10 A. Obviously, it depends upon the intent of the
11 crime, what was the intent of the crime? When you walk in
12 with a handgun, the intent isn't to scare someone.

13 Q. Okay.

14 A. Is my opinion.

15 Q. Okay. So the knowledge of me with the gun
16 with my accomplices --

17 MS. BUSBEE: I object based on an
18 objection made previously considering hypotheticals.

19 THE COURT: Sustained. Re-ask the
20 question.

21 Q. (By Mr. Shook) I think your answer was pretty
22 clear. You were referring back to the example we were
23 talking about?

24 A. Yes, sir.

25 Q. Okay. Let's -- you know, then, from living

1 here in Texas that the death penalty is something that is
2 actually carried out. You know, there are some states that
3 have it and they prosecute it and then it's -- actually they
4 just keep them on death row and they never carry it out.

5 In Texas, though, the death penalty is
6 carried out and executions actually take place. We've had
7 some years where there's been as many as forty executions.
8 Sometimes it gets a lot of press, in the national press,
9 obviously, and some view it negative and some positive. But
10 it is a punishment that's actually carried out.

11 The procedures are the same in each case.
12 Are you aware of the actual method of execution in Texas?

13 A. I believe it's by injection.

14 Q. That's right. In this case the trial would be
15 divided into two parts, the guilt/innocence stage, in which
16 the State has to prove the indictment beyond a reasonable
17 doubt. If we fail to do that, it's a not guilty. If we are
18 able to do that, we move into the second phase of the trial
19 where the jurors get these questions, these Special Issues,
20 basically, and I'll go over those in a minute.

21 But, basically, what we have to prove in
22 the punishment stage is, is the defendant is a continuing
23 danger to society, did he anticipate that a death would
24 occur, and is there sufficient mitigating evidence where you
25 think a life sentence should be imposed rather than a death

1 sentence? If you answer those questions yes, yes, and a no
2 to the mitigation question, then it would equal a death
3 sentence. Okay?

4 The Judge has no choice. That's how he
5 would sentence the defendant. And if they are answered any
6 other way, it's a life sentence. But those are the only two
7 possible outcomes, once a defendant has been found guilty,
8 the death sentence or the life sentence, and it all depends
9 on how the jurors answer these questions.

10 In this case if the defendant were
11 sentenced to death, he would be placed on death row. At
12 some point in time Judge Cunningham would actually issue a
13 date of execution. He would be taken to downtown Huntsville
14 where by law the executions take place.

15 He would be given, on the date of
16 execution, a time with family, a religious minister or
17 religious counselor. He will be given a last meal. But at
18 6:00 p.m. all executions take place, and these are usually
19 covered pretty, pretty intently by the press, some more than
20 others.

21 There are visitors there that would
22 witness the execution. Family members from the victims
23 could be there, also family members from the defendant in
24 separate viewing rooms. He's always given an opportunity to
25 make his last statement. Sometimes you read them in the

1 press. Sometimes they beg for forgiveness and sometimes
2 they are very defiant. Sometimes they proclaim their
3 innocence.

4 But after that statement is read, the
5 execution takes place, which is simply the injection of
6 three lethal substances which cause him to become
7 unconscious, cause him to lose the -- his lungs to collapse,
8 cause his heart to stop. Happens in about ten to 15
9 seconds.

10 It's one thing to talk about the death
11 penalty in a philosophical way, whether you agree with it,
12 grown up that way, and that sort of thing. And it's another
13 one when we get jurors down here and they really start
14 thinking about I could actually participate in this type of
15 case.

16 And we -- I don't mean to be morbid when
17 I talk about executions that way, but I want every juror to
18 realize exactly what we'll be asking them to do. We'll put
19 our cards on the table. We feel that we do have the type
20 and quality of evidence to prove the defendant guilty and
21 cause the jurors to answer these questions in a way which
22 would result in his execution.

23 You've told us from your personal point
24 of view that as an adult you believe in the death penalty.
25 You believe in its prosecution. You believe in people being

1 held accountable. You believe in accomplices being held
2 accountable.

3 And I just want to ask you after you have
4 kind of reflected on it, after you filled out this
5 questionnaire and come down here, do you feel that you are
6 the type of person that could listen to the evidence in this
7 case, and if we do prove these things to you beyond a
8 reasonable doubt, could you answer these questions in a way
9 which would cause you -- which would cause this execution to
10 take place someday, knowing that he would be executed some
11 day?

12 A. Yes.

13 Q. Okay. People tell us, you know, it's not
14 something that I really want to do, but if I'm called upon
15 to do it and the evidence is there, I could. Is that how
16 you feel?

17 A. Yes.

18 Q. Okay. Again, we talked at length about the
19 law of parties. I can't go into the facts of this case, I
20 can't preview the facts of this case, but I can tell you
21 that we are prosecuting this case under the law of parties
22 as an accomplice.

23 And I believe from your previous answers,
24 you are fine with that aspect of the law?

25 A. Yes, sir.

1 Q. Okay. Let's look for a minute, then, at these
2 Special Issues. And I want you to just take a moment and
3 read Special Issue No. 1 to yourself and we'll go over a few
4 questions.

5 A. (Prospective juror complies.)

6 Q. This question asks the jurors to make a
7 prediction about how the defendant would behave in the
8 future.

9 First of all, let me ask you, do you
10 think that you could make that type of prediction, if you
11 were given sufficient facts and information?

12 A. Yes.

13 Q. What types of things as a juror would you want
14 to know in this part of the trial? What would be important
15 to you?

16 A. Whether or not there were any other previous
17 crimes committed, although, I don't know if that's
18 information that I would receive.

19 Q. Most jurors tell us that and in this part of
20 the trial, that is the type of information you can receive.
21 If there have been other previous crimes, the State can even
22 produce the witnesses, if they are available, and you can
23 hear about that, the results of any trials, that sort of
24 thing. You can hear good things, too, kind of a good/bad
25 situation, this is your life, in that situation.

1 And, also, you obviously get to consider
2 the facts of the crime itself, their role in the crime, in
3 deciding this question.

4 The question starts out with a no answer,
5 just like a defendant starts out with a presumption of
6 innocence.

7 A. Yes, sir.

8 Q. It starts out with a no answer. Just because
9 you have found the defendant guilty of capital murder,
10 doesn't mean that it's an automatic yes. There aren't any
11 automatic answers in this process. The law requires the
12 jurors to wait and listen to that additional information
13 that could be produced and also review the information they
14 have already learned in the guilt stage of the trial and
15 then decide has the State proven this to me beyond a
16 reasonable doubt? If we haven't, if we failed, then you
17 leave it as a no answer. If we have, then you answer it
18 yes. But you can't answer yes, just because you found him
19 guilty.

20 We have a few jurors that tell us they
21 would, quite frankly, that answers the question for them.
22 But the law contemplates that there may be some fact
23 situations where someone is a continuing danger based on
24 their history and facts of the case, and then there's other
25 situations which maybe they won't be viewed as a continuing

1 danger. It's just up to the juror after they hear those
2 particular facts.

3 Do you feel that you can follow that
4 aspect of the law, that rule of law, and wait and make your
5 decision on question No. 1 after you have heard all the
6 additional evidence and then deliberate on all the issues
7 and decide if we have proven that?

8 A. Yes.

9 Q. Just because you found him guilty, you
10 wouldn't automatically answer question No. 1 yes, then?

11 A. That is correct. I would not.

12 Q. It could be some situations where you would
13 and some situations where you won't. It's just going to
14 depend on the facts of the case?

15 A. Absolutely.

16 Q. Okay. That's what the law contemplates the
17 jurors will do. Obviously, they want you to look at all the
18 information before you make these types of decisions.

19 Now, we have to prove that there's a
20 probability that the defendant would commit criminal acts of
21 violence. When you see the word "probability" there, what
22 does that mean to you?

23 A. That there's a propensity to have another
24 crime committed by this particular individual.

25 Q. When -- I ask that question because, you know,

1 you get a lot of legal definitions when you sit on a jury,
2 but you wouldn't get legal definitions for these particular
3 words. The courts have left the meaning of these words up
4 to the jurors, really. And they ask you to use your common
5 sense.

6 The only guidelines we get on probability
7 is at one end, obviously, probability in that question
8 doesn't mean a certainty because the State would never prove
9 something is going happen in the future to an absolute
10 certainty. Then at the other end, it's obviously more than
11 just a possibility. Anything is possible. So they want it
12 to be more than a possibility. So they come up with this
13 word "probability".

14 A lot of people tell us more likely than
15 not, greater than 50 percent, that sort of thing. Are you
16 comfortable with that type of language in this question and
17 that type of definition?

18 A. Yes.

19 Q. In other words, we would have to prove more
20 than a possibility, but not to the extent that it's an
21 absolute certainty.

22 A. Yes.

23 Q. We have to prove that he would commit criminal
24 acts of violence. When you think of "criminal acts of
25 violence" in the context of that sentence, what types of

1 crimes do you think of?

2 A. I think of armed robbery, I think of sexual
3 abuse, or violence. I think of any type of firearm usage,
4 whether it's a home invasion with a firearm.

5 Q. Some type of violence, then, to another human
6 being, either a threat to actual violence to them?

7 A. Yes.

8 Q. And then constituting a threat to society.
9 What does "society" mean to you?

10 A. Us.

11 Q. Okay. Just any human beings that the
12 defendant may come into contact with?

13 A. Absolutely.

14 Q. Could it include people in the prison system,
15 guards --

16 A. Certainly.

17 Q. -- wardens, teachers, that sort of thing?

18 A. Certainly.

19 Q. This question is answered independently. It's
20 the first one you get. And as I said before, the State has
21 to prove to you that it has to be answered yes. If you
22 answer that question yes, you move to the second question.

23 Again, it starts out with a no answer and
24 we have to prove to you that it should be answered -- it
25 should be answered yes. If you will take a moment to read

1 that one to yourself.

2 A. (Prospective juror complies.)

3 Q. This question has to do with that law of
4 parties that we talked about. It -- the first part asks if
5 he actually caused the death. So if you believe he's the
6 triggerman, it's a pretty easy answer.

7 But the second part deals with the
8 accomplice situation, the nontriggerman.

9 A. Yes.

10 Q. What we have to prove from the facts are
11 either he had to intentionally kill, or maybe one of the
12 other accomplices did so, or he anticipated that a human
13 life would be taken.

14 What we have to do, we obviously can't
15 stop and open up someone's head and show you what their
16 intent was. But we can produce all the facts surrounding
17 the crime and jurors can draw inferences from a person's
18 intent.

19 Do you feel that you can do that, if you
20 are given sufficient facts surrounding the crime?

21 A. Yes.

22 Q. Part of that law is in the guilt/innocence
23 stage. Under the law if Mr. Wirsky and I have a conspiracy
24 to commit one crime -- and that just simply means we have an
25 agreement to. An example I gave is bank robbery. And

1 during the course of that crime, if one of the persons
2 involved commits another crime to further it, in our case
3 murder, then they are all held responsible, if they should
4 have anticipated that a crime would occur. It's kind of a
5 common sense proposition. That's what we have to prove to
6 get a person guilty.

7 Then in this question, we go just a
8 little step further, and not just should they have
9 anticipated, but did they anticipate. And, again, all the
10 jury does is look at all the facts surrounding the
11 particular crime and then any additional information in the
12 person's background that might help them answer that
13 question. Do you feel that you could do that?

14 A. Yes.

15 Q. Okay. Then we move to Special Issue No. 3.
16 That's the most lengthy question. So take a moment and read
17 that and I'll go over a couple more things on it.

18 A. (Prospective juror complies.)

19 Q. That's the mitigation question. It's the last
20 question you get and neither side has the burden of proof.
21 It's kind of what we call the safety net. You have already
22 found the person guilty. You would have already found they
23 are a continuing danger. You would have already found that
24 they anticipated a human life would be taken, but it allows
25 the jurors to look at all the information, the person's

1 background, the crime, and then decide if they think a life
2 sentence should be imposed or a death sentence. It's a
3 decision you make in your heart and, also, in your mind,
4 because it has to be based on evidence.

5 As you sit there today, you are not
6 required to tell us what you think mitigating evidence is.
7 You are just required to keep your mind open to it. Do you
8 think that's a good question to have in this type of case?

9 A. Yes.

10 Q. As you sit there today, does anything come to
11 mind? Do you have any gut reactions about anything you
12 would view as potentially mitigating?

13 A. No, but I certainly understand why they want
14 to try to get a total picture of the individual, a better
15 picture of the individual of their character, not just of
16 this particular situation or incident.

17 Q. Right. As I said before, you don't have to
18 tell us what mitigating evidence would be. Most jurors
19 can't. They don't sit around thinking about these issues,
20 thankfully, but you just have to keep your mind open to it.

21 And we hear lots of different areas,
22 because it can cover just about anything. We talk about
23 background information a lot. You know, you may hear about
24 a person's childhood. We've had some jurors tell us if they
25 were abused physically or mentally, that could be

1 mitigating, depending on the severity, and maybe they came
2 from a poor background. We've had other jurors tell us, I
3 feel bad for them, but once you reach adulthood, you know,
4 you have to be held accountable for those things and that
5 really doesn't weigh a lot with me in that regard.

6 But you hear a lot about background
7 information in these types of cases. Do you feel that could
8 be potentially mitigating information or do you think that
9 really doesn't come up in these situations?

10 A. I think it may come up for other people. It
11 doesn't come up for myself.

12 Q. Okay. Sometimes you hear about drug use, drug
13 habits. People feel differently about that. Some people
14 feel strongly that it could be mitigating and others very
15 strongly -- they actually view it as aggravating, if it's
16 voluntary drug use, that sort of thing. Do you have any
17 feelings about that one way or the other?

18 A. No.

19 Q. The bottom line is, whatever it is, you can
20 keep your mind open to it and if you think it's sufficiently
21 mitigating, you could answer the question in a way which
22 would spare the defendant's life. And if you don't think
23 there's sufficient mitigating evidence, you can answer it
24 no, knowing when you did that, the defendant would be
25 executed someday down the line. Do you think that you can

1 do that?

2 A. Yes.

3 Q. There are certain rules that apply to each
4 case, each criminal trial, not just capital murder. One is
5 the presumption of innocence which I'm sure you have heard
6 of. Every defendant must start out with that presumption of
7 innocence. The fact that they've been arrested, indicted,
8 go to the Grand Jury, is no evidence of his guilt. You
9 must, as a juror, start him off with that presumption of
10 innocence, and the State has to prove to you beyond a
11 reasonable doubt it should be answered yes.

12 Do you feel that you could follow that
13 rule of law?

14 A. Yes.

15 Q. The burden of proof stays at this table. We
16 have to prove this case beyond a reasonable doubt and that
17 burden of proof never shifts to the defense. They don't
18 have to ask questions. They don't have to put on witnesses.
19 They don't have to make arguments. Now, I anticipate they
20 will defend the defendant. They are good lawyers. They are
21 going to do their job.

22 But I give that example of -- sometimes I
23 give an example of they can sit there and work crossword
24 puzzles, if they wanted to. And the law says that because
25 the burden of proof never leaves this table, and you can't

1 require them to prove his innocence or anything else. You
2 can't shift the burden on them. It must remain on this
3 table at all times.

4 Do you feel that you can follow that rule
5 of law and require the State of Texas to prove this case to
6 you beyond a reasonable doubt?

7 A. Yes.

8 Q. You would not require the defense to prove the
9 defendant's innocence or anything else to you?

10 A. No.

11 Q. Okay. The burden of proof goes to every
12 portion of the indictment. The indictment sets out what we
13 have to prove in this case and we have to prove every
14 element of it. We even put where the crime occurred, Dallas
15 County. The law requires us to prove that beyond a
16 reasonable doubt as well as the identity of the killer and
17 how it occurred. If you have a reasonable doubt, even on
18 Dallas County, the law says the jurors would have to acquit.
19 May sound like a technicality, but it's not under the law.

20 And I don't anticipate it would be
21 happening, but if you sat on a case where maybe you believe
22 everything we put in the indictment, that we have proven it,
23 but you felt maybe this case happened in Tarrant County, we
24 really bungled the case in our preparation, and it did
25 happen in another county, you would be required under the

1 law to find the defendant not guilty. You may not like it,
2 obviously, and I'm sure we would be fired for our lack of
3 preparation, but you can't help us out as a juror in that
4 regard. You have to require us to prove every bit of it.
5 Can you follow that rule of law?

6 A. Yes.

7 Q. Let me talk about the Fifth Amendment. I'm
8 sure you have heard that word before. Anytime someone is
9 charged with an offense, if they choose not to testify,
10 exercise their Fifth Amendment privileges, the Court
11 instructs the jury that they cannot consider that as
12 evidence of their guilt.

13 There could be many reasons why a person
14 may not testify. You know, they may not make a very good
15 witness, they may be very poorly educated, they may be very
16 nervous, they may appear to be guilty, and they are not --
17 they simply may be following their lawyer's advice --

18 A. Yes, sir.

19 Q. -- who tells them not to. The Court takes
20 care of any number of reasons why a person may not testify
21 by simply telling the jury you can't hold that against him.
22 You have to decide this case just based on the law and
23 evidence that you hear. Do you feel that you can do that?

24 A. Yes, sir.

25 Q. The parole laws come up in the news quite

1 often. I can tell you that the Court will instruct you that
2 in a capital murder case a capital life sentence means a
3 person must serve forty calendar years before they become
4 eligible for parole. Then that doesn't necessarily mean
5 they will be paroled. They are just eligible. The Court
6 will also instruct you that you can't consider the parole
7 laws at all during your deliberations. You have to consider
8 a life sentence, a life sentence. Could you follow that
9 rule of law?

10 A. Yes, sir.

11 Q. Police officers often testify in these cases
12 and most of the jurors respect the job that the police do.
13 They come in as witnesses. And what the Court merely says
14 is you would have to start them out like you would any other
15 witness.

16 A. Yes, sir.

17 Q. Despite having respect for them, I think
18 everyone recognizes there are good police officers and bad
19 police officers. Like any profession, you have good and
20 bad.

21 A. They're human beings, I'm sorry.

22 Q. Exactly, they are just human beings. So start
23 them off and then judge their credibility once they testify.
24 And, again, the bottom line is you just have to keep your
25 mind open on all these questions. Just because you found

1 him guilty, you don't answer them yes. You have to wait and
2 weigh any new information that you hear in the punishment
3 phase and then require the State to prove question No. 1 and
4 question No. 2 to you beyond a reasonable doubt.

5 That last question is simply you look at
6 all the evidence and decide if you think there's sufficient
7 mitigating evidence. You do, you answer it yes. If you
8 don't, you answer it no. And you feel you can do all of
9 that?

10 A. Yes, sir.

11 Q. We've gone over a lot of different areas. Do
12 you have any questions over anything that we've gone over?

13 A. No, sir.

14 Q. Okay. I appreciate your attention and
15 patience with me.

16 MR. SHOOK: And, Judge, that's all the
17 questions that we have at this time.

18 THE COURT: Ms. Busbee?

19 CROSS-EXAMINATION

20 BY MS. BUSBEE:

21 Q. Do you need some water or anything?

22 A. No, ma'am, thank you.

23 Q. Sometimes we get dry mouth talking so much.

24 A. I appreciate that, thank you.

25 Q. Here I am offering you some water. You do

1 that sometimes for a living, don't you?

2 A. Yes, I do.

3 Q. We want everybody to be comfortable, too.

4 A. But you don't thank people for their trash.

5 Q. I'm not going to lob that one back. Anyway,
6 you saw how many people we had down here that morning --

7 A. Yes, ma'am.

8 Q. -- you came? And, you know, obviously, we're
9 not trying to make a lifetime case of this. We weed a lot
10 of people out. I think you are about the 38th, more or
11 less, person we've talked to, but your juror number is 1242.
12 So you can see that we pick the people that both sides feel
13 would be the most reasonable and most likely to sit on this
14 jury.

15 And I'm prefacing my comments to you by
16 stating that, because I want you to talk to me. And I know
17 you understand the law and I know that when you filled out
18 this questionnaire you weren't told what the law is, which
19 seems unfair, but, you know, we kind of want to get your gut
20 feelings about things before we tell you the scheme and the
21 way this is handled.

22 And the reason for that is that this
23 isn't, you know, a contract or a question about who is going
24 to raise a child or whether somebody should go to prison for
25 X number of years. It's something that is gut level for

1 everybody. And someone died, the victim of the crime. And
2 someone else may die. And so it arouses emotions in people.

3 And there's nothing wrong with having
4 that feeling. It's recognized that people have that.
5 That's why we have this individual voir dire that we have.

6 So I guess what I'm trying to explain to
7 you is, it doesn't make you a bad person or bad citizen, if
8 you have concerns that you think may affect your service,
9 one way or the other. I was just thinking when we were
10 looking at your questionnaire and talking to you this
11 morning, that you have kind of seen things in the system
12 from both sides. I mean, you have a son that's involved in
13 -- not a defendant, but is in a civil matter and then you
14 are a victim of a crime. So I think in both instances you
15 would want jurors who could be unbiased in that type of
16 case. And I hesitate to use the word "bias". I don't --
17 because that has a negative connotation.

18 And I'm just telling you that, so you
19 will feel free and relax and just tell us your true thoughts
20 on things, because Mr. Shook always does a real thorough job
21 of telling you what the law is. And I just want to talk to
22 you about your thoughts on it, now that it's been explained
23 to you.

24 I spend most of my time in the courtroom,
25 but whenever I get called to the witness stand, there's a

1 rush of nervousness and I'm sure that jurors feel that way,
2 particularly when they come in here and they don't know what
3 they are going -- how they are going to be questioned or
4 anything. And then they get sent up on the witness box and
5 grilled. So relax. And I'm not going to take as long as
6 Mr. Shook, I don't imagine.

7 But let's talk about this case and how
8 you feel about sitting on this jury. But I want to ask you
9 this first, because I made this note. You expressed some
10 frustration in what was going on in your son's case. Could
11 you elaborate on that?

12 A. Well, the frustration is the unknown and the
13 unknown is there's no particular timeframe. I thought there
14 was a particular timeframe of ordered mediation and there
15 may be, but I'm just not aware of it.

16 Q. Is this a case where there was restitution to
17 be paid?

18 A. I don't know. This is my first time here.
19 It's my first time there. So I'm -- I'm truly not educated
20 in that arena to really be able to answer that properly,
21 because I really, truly, don't know how long those types of
22 situations take place.

23 Q. The few times I've gone over to juvenile, I've
24 collared somebody I know and said do this for me, because
25 it's really different. It's a different system. Do you

1 have a lawyer?

2 A. Yes, ma'am.

3 Q. So you have confidence in that person?

4 A. Yes, ma'am.

5 Q. As to this case tomorrow, has it been set for
6 trial before?

7 A. Yes, ma'am.

8 Q. How many times?

9 A. Twice.

10 Q. And have you had any communication with the
11 District Attorney's Office as to whether it's going to go to
12 trial?

13 A. It's going to trial tomorrow.

14 Q. For sure?

15 A. Yes, ma'am. It's either for trial or dismiss.

16 Q. But are you the complainant?

17 A. Yes, ma'am.

18 Q. So you are going to be there. So I assume
19 it's going to be tried?

20 A. Yes, ma'am. First time.

21 Q. Do what?

22 A. It would be my first time there as well.

23 Q. Now, you will have some experience.

24 A. Yes, ma'am.

25 Q. You would be a cool, collected witness. The

1 District Attorney's Office is not exactly representing your
2 interests in this case or representing you as a victim. Do
3 you have any feelings like the District Attorney's Office is
4 your attorney and somehow you owe them something because of
5 that?

6 A. No.

7 Q. I like to ask that question.

8 A. Certainly, I understand that. I just know
9 that I have talked to a few different people. They move
10 quite frequently through that office is what I've learned.

11 Q. Yes, they do. Yes. And they try really hard
12 on those domestic cases.

13 A. Yes, ma'am.

14 Q. It's got everybody's attention. So your
15 situation is probably better than most victims of a
16 misdemeanor crime.

17 A. Yes.

18 Q. They watch those cases carefully. Okay. Do
19 you remember who the defense attorney is on that case where
20 you were harassed or do you know?

21 A. It's her brother.

22 Q. Do you know his name?

23 A. Yes.

24 Q. Could you tell me?

25 A. Certainly. His name is William Connelly

1 (phonetic). He's coming in from South Carolina.

2 Q. Wow. I need to come watch that.

3 A. It ought to be entertaining, I'm sure.

4 Q. I'm visualizing some guy in a straw hat and a
5 white suit. Now, people -- well, let's see. Now, when you
6 spoke originally, as I said, on your questionnaire about the
7 death penalty, you said that you envisioned that for heinous
8 and willful crimes. And words to that effect we often see
9 on these questionnaires. And I suspect that you probably
10 were thinking of one individual, sort of, situation. Would
11 that be a fair statement?

12 A. Yes and no. Yes, it is, but I neglected to
13 include my friends that were involved in September 11th.

14 Q. You know, he mentioned that to me and I never
15 did know whether to bring it up or not.

16 A. Well, and I did not deliberately omit that,
17 but that happened and --

18 Q. You lost some personal -- I suspected that you
19 might have some personal friends in 9/11?

20 A. Yes, yes.

21 Q. Since you spontaneously told me that, do you
22 think that's in your mind as far as prosecuting people for
23 capital murder?

24 A. Well, it's a totally separate crime.

25 Q. Well, it is. But it would be certainly a case

1 that would be a capital murder case, had anybody survived to
2 prosecute.

3 A. Yes, that's true.

4 Q. I mean, would that be in your mind somehow
5 while this case is going on?

6 A. No, because it's a totally separate --

7 Q. Okay. Well, I just, you know, I told you I
8 wanted to know how you feel about things, just to see. I
9 know you understand the scheme where the State is allowed to
10 seek the death penalty for someone who is not actually the
11 person that committed the murder.

12 How do you feel about that as a law?
13 What were your thoughts on that?

14 A. I think that there is accountability for all
15 who is involved. I think that if it's a group effort, I
16 think the group certainly has an idea of what their goal is
17 in committing their crime. And I don't know if this
18 particular group was aware.

19 Q. So you would make them prove that to you?

20 A. Absolutely.

21 Q. So let me just reiterate this. The
22 responsibility, I suppose, is the guilt and I don't think
23 anybody has any quarrel with the fact that if you are a
24 party or sometimes we use the word "accessory" here,
25 although that's not the legal term in Texas, but it makes

1 more sense to people because that's the more common word.
2 But an accessory would be just as guilty. Guilty now, not
3 punished, but guilty of a crime that the primary actor
4 committed. That's the law here in Texas.

5 But the question this voir dire focuses
6 on is the punishment of that guilt. And I'm just asking you
7 if you distinguish in your mind, as far as punishment is
8 concerned, between the actual -- the person who actually
9 committed the murder and a lesser participant?

10 A. Can I distinguish between the two?

11 Q. Would you --

12 A. Yes.

13 Q. -- in your mind? And does this scheme make
14 sense to you as a way to make that distinguishment to
15 distinguish that? Does that make sense to you?

16 A. Yes.

17 Q. I would like to talk to you about Special
18 Issue No. 2. This is -- this may be a difficult one to a
19 jury because it requires a finding beyond a reasonable doubt
20 that a person did anticipate that a life would be taken.

21 What kind of proof would you need to make
22 that determination, just off the top of your head?

23 A. Motivation, the goal, the intent of what they
24 were after.

25 Q. Okay. Like intent to commit a murder? Is

1 that in your mind?

2 A. Intent to commit a crime.

3 Q. Well --

4 A. I mean, was there an intent to commit a crime?

5 Q. Well, you would have already decided that when
6 you found them guilty.

7 A. Okay.

8 Q. So having decided, and as Mr. Shook explained
9 to you, when you find someone guilty of capital murder, you
10 have found beyond a reasonable doubt that person should have
11 anticipated, should have anticipated, that a life would be
12 taken.

13 A. Yes.

14 Q. So would you feel like you had decided that
15 someone should have anticipated, that that answers that
16 question as to whether they did anticipate that a human life
17 would be taken?

18 A. Yes.

19 Q. And that's a hard question. So pretty much,
20 if you have decided, as a juror in a hypothetical death
21 penalty case, that someone should have anticipated that
22 someone would be killed, you would answer Special Issue No.
23 2 yes?

24 A. Yes.

25 Q. Understanding that actually you would have to

1 -- your finding would be different. You would be finding
2 that he did anticipate it, but should have anticipated and
3 did anticipate are the same to you, as far as deciding
4 Special Issue No. 2?

5 A. Yes.

6 Q. And just as one last question, if you have
7 decided in a capital murder case that someone was guilty of
8 the offense of capital murder and it was established to you
9 beyond a reasonable doubt that they were a continuing threat
10 to society and that they did anticipate that a human life
11 would be taken, would there be anything, really, that would
12 sway you to say that they shouldn't be given the death
13 penalty?

14 A. Well, that gets into Special Issue No. 3.

15 Q. Right, right.

16 A. And I think until you see all the facts, hear
17 all the testimony to get the total picture, it can't be
18 answered until you hear all the evidence.

19 Q. Okay. Fair enough. I appreciate your honesty
20 because we just need to know that, some of these fine points
21 on how people actually feel. As I said, you don't have to
22 agree with the law necessarily, but we need to know your
23 thoughts on what things mean to you personally before we can
24 pick that special, unlucky fourteen that we're going to pick
25 to sit on this jury. So I appreciate your time.

1 MS. BUSBEE: I have no other questions of
2 this juror.

3 THE COURT: I will go through the issue
4 again with Ms. Johnson. Ms. Johnson, like I said, when we
5 give the law, it's a lot to understand. I need to tell you
6 again what the law is regarding Special Issue No. 2. We use
7 some words of art that are not defined. It's much like the
8 language that you speak on your job that I wouldn't have any
9 clue what you are talking about.

10 This scheme here is a filter. Let me
11 give you an example of Special Issue No. 2 where a person
12 did not actually cause the death, but intended to kill or
13 anticipated that a human life would be taken. Murder for
14 hire. If I hire a hitman to kill my business partner.

15 PROSPECTIVE JUROR: Okay.

16 THE COURT: Fair enough?

17 PROSPECTIVE JUROR: Yes.

18 THE COURT: I intend for my business
19 partner to die and it's called murder for hire. That's a
20 capital case. That's a real good issue, real good example,
21 for Special Issue No. 2. You look at it real carefully.

22 Then you have got the example that
23 Mr. Shook gave you of the bank robbery.

24 PROSPECTIVE JUROR: Yes.

25 THE COURT: Where you have got a driver,

1 the bagman, and the gunman. Now, if I'm the driver and I
2 know we're going to go and rob the bank, but I didn't have
3 any intent that anyone be killed, but they both go in with
4 guns.

5 MS. BUSBEE: Your Honor, I would renew
6 the objection I made previously concerning questions to the
7 jurors about fact situations.

8 THE COURT: Overruled. I'm trying to be
9 sure she understands the law. You have three different
10 people doing three different things.

11 PROSPECTIVE JUROR: Yes.

12 THE COURT: If a murder occurs, all three
13 could potentially be guilty.

14 PROSPECTIVE JUROR: Yes.

15 THE COURT: But then if we go to the
16 sentencing phase, the State has to prove that any of the
17 three individuals went into the program with the intent to
18 kill or actually anticipated that a human life would be
19 taken.

20 PROSPECTIVE JUROR: Yes.

21 THE COURT: Do you see there's a
22 distinction there --

23 PROSPECTIVE JUROR: Yes.

24 THE COURT: -- between guilt and
25 punishment under this scheme?

1 PROSPECTIVE JUROR: Yes.

2 THE COURT: If you go in like if you are
3 in for a penny, you are in for the pound, if you are going
4 in to commit one felony and another one occurs, you are good
5 for it, if you are a party.

6 PROSPECTIVE JUROR: Yes.

7 THE COURT: That's the fine distinction
8 here. It's a filter. It's saying that you can commit a
9 horrible crime, but in order to get to that Special Issue
10 No. 2, you have got to have the intent, specific intent,
11 that a death will occur or you -- or you did anticipate that
12 a human life would be taken. Should have anticipated on the
13 guilt side. You should have known if you go into a bank
14 with a loaded gun, somebody might get killed.

15 PROSPECTIVE JUROR: Yes.

16 THE COURT: Versus before you walk in,
17 did you anticipate someone would be killed? Should have and
18 did. There's a distinction there.

19 PROSPECTIVE JUROR: Yes.

20 THE COURT: Have I drawn that a little
21 clearer for you?

22 PROSPECTIVE JUROR: Yes.

23 THE COURT: That's the law. Ms. Busbee's
24 question was if you have found someone guilty of capital
25 murder, does it automatically answer Special Issue No. 2 for

1 you?

2 PROSPECTIVE JUROR: No, because it has to
3 answer the question as a filter, as you stated.

4 THE COURT: Would you like to redirect
5 some more questions?

6 Q. (By Ms. Busbee) What was your understanding
7 of what the Court just told you? Could you explain that to
8 me?

9 A. What the Judge just stated about whether or
10 not actually knowing going in and whether or not you
11 anticipate in the crime of going in and committing murder.

12 Q. What about that changed your answer?

13 A. I think you have to really look at the
14 question and you have to look at whether or not they
15 anticipated, as the Judge stated, or whether or not they
16 knew going in.

17 Q. Well, that's what the law is, of course, and
18 you already said that you understood the law. My question
19 to you originally was as a practical matter, the way you
20 think, if you had previously determined that someone should
21 have anticipated that a human life would be taken, which you
22 would have done, that you would answer yes to whether or not
23 they actually anticipated.

24 A. But I think that you still need to look at all
25 the facts before you assume that.

1 Q. Sure. But that's not my question. My
2 question is, you on this hypothetical capital murder case,
3 have already determined beyond a reasonable doubt that
4 someone should have anticipated that a life had been taken
5 because that's a given. You have said beyond a reasonable
6 doubt this person should have anticipated that a human life
7 would be taken.

8 A. Yes, ma'am.

9 Q. Okay. Now, Special Issue No. 2, having made
10 that determination, would those facts that you heard in the
11 first part of the case, have you answered that he did
12 anticipate because you would have taken the facts into
13 consideration --

14 A. Yes.

15 Q. -- in guilt/innocence? And would you say,
16 well, I have already decided that because we looked at that
17 in guilt or innocence?

18 A. But I think it needs to be looked at a little
19 bit closer, as the Judge explained, as a filter.

20 Q. And that's based on the facts that he told you
21 about a hypothetical, how that might have happened?

22 A. No. It's based upon how the statement is,
23 which is real poor English.

24 Q. We're all guilty of that.

25 THE COURT: That's your Legislature that

1 does that.

2 PROSPECTIVE JUROR: I was curious as to
3 who did it. It wasn't an English major.

4 Q. (By Ms. Busbee) And in considering Special
5 Issue 2, what sort of evidence would you think you need over
6 and above what you have already heard?

7 A. I guess it wouldn't be, if you got all the
8 evidence to make that decision for capital murder of guilt
9 or innocence at that time.

10 Q. So you wouldn't need additional evidence to
11 find that?

12 A. No.

13 Q. Now, see, I think that's what you are really
14 trying to tell us, but -- and nobody is arguing with you.
15 But it's what you said originally. And understanding what
16 the law is and saying that you feel one way, are two
17 different things. If you had already --

18 A. Maybe I don't understand the law.

19 Q. And we will work you to death on this and I'm
20 sorry. You don't have to understand the law, necessarily,
21 to answer these questions. In fact, I appreciate that you
22 are a lawabiding citizen or you wouldn't be here, if you
23 weren't.

24 But my question is you, yourself,
25 personally, not anybody else, if you had already determined

1 beyond a reasonable doubt based on what you heard from the
2 State, that an individual was guilty of capital murder
3 because he should have anticipated that a life would be
4 taken, would that be enough evidence to also convince you
5 that they did anticipate that a life would be taken?

6 A. Yes.

7 Q. Okay. So to you, like some people, perfectly
8 valid opinions, should have anticipated and actually
9 anticipated have no actual difference in your mind, as far
10 as making these determinations?

11 MR. SHOOK: We object to that question, I
12 guess, actually the previous questions in that there doesn't
13 have to be additional evidence presented, necessarily, for
14 question No. 2.

15 MS. BUSBEE: I think my question doesn't
16 address that. My question is whether those terms are
17 interchangeable in her mind.

18 THE COURT: Overruled.

19 Q. (By Ms. Busbee) That means you can tell me if
20 that does mean the same thing to you as a practical matter?

21 A. Now, I'm totally confused and I apologize. I
22 mean --

23 Q. Of course. You have already determined in a
24 death penalty -- in a capital murder that someone should
25 have anticipated a human life would be taken based on the

1 facts that were told to you when you tried to decide if they
2 were guilty or not. That's decided beyond a reasonable
3 doubt in your mind, they should have known, should have
4 anticipated that a life would be taken.

5 We get to the second part of the trial.
6 When you get to Special Issue No. 2, would that question be
7 answered for you that they did anticipate because you felt
8 they should have anticipated?

9 A. I think that question would be answered during
10 the trial.

11 Q. Okay. The first part of the trial?

12 A. I don't know. I've never been through a
13 trial, so --

14 Q. But we can't put you through it and then ask
15 you questions.

16 A. No, I understand. But what I'm saying is, and
17 correct me if I'm wrong, but in order to decide your Special
18 Issues, you have to have all the information first.

19 Q. Well, you may decide these Special Issues
20 based on the facts of the guilt or innocence.

21 A. Yes.

22 Q. I mean, we don't know what the State may
23 offer. My question, again, just understanding this is a
24 hypothetical and it's not a trap you are going to fall in,
25 it's just how you feel. Believe me, we couldn't outsmart

1 you. We're just asking questions.

2 A. I'm sure you can.

3 Q. But, anyway, you, yourself, I've decided that
4 this individual should have anticipated. I've decided that
5 already, because I found him guilty. As a practical matter,
6 in my mind, Special Issue No. 2, should have anticipated
7 means I'm going to find that he did anticipate, he
8 anticipated a human life would be taken.

9 A. I think that you would as it plays out in
10 court. I don't think that you come into any conclusion
11 until you come to that part of the --

12 Q. But now you have had your deliberation on
13 Special Issue No. 1 and you go to Special Issue No. 2 and
14 you say to yourself or don't, I've already decided this on
15 when I decided that he should have anticipated, and having
16 decided that he should have anticipated it, I have no --
17 need no more to feel that he did anticipate that a murder
18 would be taken.

19 You have told me before we started
20 yanking on your arms in the opposite direction, you said,
21 yeah, it's the same thing to me as a practical matter and I
22 just -- I don't want to confuse you with telling you
23 hypothetical this, that, and the other.

24 Just bottom line thing, I found he did,
25 should have anticipated. It's no different for me. I don't

1 need anything else to find that he did anticipate.

2 A. That is correct.

3 Q. Okay. And that's all I wanted to ask you,
4 because if you feel that should have anticipated in the
5 first part and did anticipate in the second part are
6 equivalent and having decided --

7 A. I don't know that they are actually
8 equivalent. I don't know that I would agree with that
9 statement, but --

10 Q. Do you think --

11 A. I answered yes, but I don't -- I don't see
12 them as the same.

13 Q. All right. My question is, you would
14 automatically feel that he had anticipated because you had
15 already found that he should have anticipated?

16 A. I can't say how I automatically feel.

17 Q. All right. Now that we've worked you to
18 death, what haven't we asked you about that you wanted to
19 talk about? You started to talk about a friend that you
20 lost on September 11. Is there anything else about that
21 that you wanted to talk to us about?

22 A. That it was a difficult day.

23 Q. It was a horrible day. Any thoughts about
24 serving on this jury?

25 A. No. I think that I would be proud as a

1 citizen of Dallas County to participate in whatever I can
2 do.

3 Q. And I appreciate that. Something else here on
4 my notes, you talked about in response to questions to
5 Mr. Shook about how you remembered some of the coverage and
6 the people that were considered dangerous.

7 Do you feel like you will be thinking of
8 that in sitting on this case? Do you have any opinions
9 about that? I mean, people sometimes do have opinions about
10 things that may be in the back of their mind.

11 A. There are no concerns about this particular
12 case.

13 Q. Okay. My question is, have you already formed
14 an opinion, say, for instance, as to the question of future
15 dangerousness, just based on what you have heard?

16 A. No. I mean, that was when individuals were
17 supposedly, you know, not found and --

18 Q. Okay. So you don't have any preconceived
19 ideas about this individual based on publicity?

20 A. No.

21 Q. Okay. All right. Fair enough.

22 MS. BUSBEE: That's all the questions
23 that I have, Your Honor.

24 THE COURT: Ms. Johnson, I'm not going to
25 ask you any more questions or give you any more law. But I

1 do say at the end of the process, do you understand on
2 Special Issue No. 1 and Special Issue No. 2 that the State
3 has to prove those to you, a juror, beyond a reasonable
4 doubt?

5 PROSPECTIVE JUROR: Yes.

6 THE COURT: Do you have an open mind that
7 you could answer those questions both yes and no?

8 PROSPECTIVE JUROR: Yes.

9 THE COURT: No. 3, neither side has to
10 prove it to you. They simply -- you can use all the
11 evidence that you are given, step back, and you can answer
12 that question yes or no, depending on the evidence; is that
13 correct?

14 PROSPECTIVE JUROR: Yes.

15 THE COURT: Thank you very much, ma'am.
16 If you will, wait outside. We'll have you back in just a
17 few minutes.

18 [Prospective juror out]

19 THE COURT: What says the State?

20 MR. SHOOK: State has no challenge for
21 cause.

22 MS. BUSBEE: Defense has a challenge for
23 cause, Your Honor, based on actually two challenges for
24 cause. This juror has stated unequivocally and
25 spontaneously that she would decide Special Issue No. 2 in

1 the affirmative, having decided that an individual was
2 guilty of a capital case offense of capital murder. She
3 stated not once, but she stated it twice.

4 The Court gave her hypotheticals over
5 objection of counsel and made some statements of law to
6 which we object to. And it's my feeling that some of the
7 law was a misstatement of law.

8 THE COURT: If I misstated it, please
9 tell me.

10 MS. BUSBEE: Well -- and so my first
11 challenge for cause has to do with the fact that she cannot
12 follow the law and she will automatically assess -- answer
13 question No. 2 yes. That's the challenge for cause number
14 one.

15 THE COURT: If I have made a misstatement
16 of the law, let's review the record and see where I've made
17 an error. Have Nancy pull it up and show me.

18 (Recess)

19 THE COURT: Back on the record.
20 Ms. Busbee, have you had an opportunity to review the
21 comments I made to Ms. Johnson?

22 MS. BUSBEE: Yes, Your Honor.

23 THE COURT: Did the Court make any
24 misstatement of the law?

25 MS. BUSBEE: Your Honor, so you are

1 denying my challenge for cause? My first challenge for
2 cause was having to do with the fact that she can't -- she
3 can't give effect to Special Issue No. 2. She would have
4 already decided that.

5 THE COURT: Motion denied.

6 MS. BUSBEE: Now, I think when you take
7 the totality of the comments of the voir dire and the
8 colloquy with the Court and her answers to you and her
9 answers to me, that it's clear that -- it's unclear to me
10 whether she actually understood what the Court was telling
11 her, but it's abundantly clear to me that she -- she did not
12 understand what the Court was telling her. She only
13 understood that she needed to change what she said to me
14 and, in fact, when I asked her flat out again, after she had
15 spoken to the Court, that she said that she had prejudged
16 that question, once again.

17 And I think that the comments of the
18 Court -- I don't want to call it -- necessarily say I think
19 in the totality it was a misstatement of the law in the
20 totality of the comments to her, because it was unclear to
21 the juror as to whether or not the Court was talking to her
22 about the guilt/innocence stage or the punishment phase, and
23 I suppose that's something, a hair that may or may not have
24 to be split at the appellate level, but I made the objection
25 and the Court overruled it in the presence of the juror.

1 I feel that the juror is subject to a
2 challenge for cause based on the line of cases having to do
3 with the prosecutor making the statements and overruling
4 would be an even stronger situation where the Court has
5 overruled my objection.

6 And I ask that you grant a challenge for
7 cause on that, on the totality of this voir dire with this
8 juror.

9 THE COURT: Does the State have any
10 response?

11 MR. SHOOK: Judge, we feel that based on
12 all her responses, she's obviously a very intelligent juror.
13 And I think even on her own she said it might be -- it was
14 something we need to look at a little further. And after
15 she talked to the Court, she understood it. It could be the
16 same exact evidence, it's just that you have to go that step
17 further. I think in the end she articulated that. So I
18 think she is qualified.

19 THE COURT: The Court finds with the
20 totality of the understanding and opportunity to listen to
21 the witness, see her response, see her deliberations on this
22 Special Issue No. 2, and her comment that it was very poorly
23 drafted, which is a pretty accurate statement, that she does
24 understand there is a difference. She does understand it
25 would be a subsequent inspection of the evidence and

1 subsequent finding which she said she could both find yes
2 and no after finding someone guilty of capital murder. The
3 Court finds Ms. Johnson to be qualified.

4 MR. SHOOK: State accepts the juror.

5 MS. BUSBEE: May we have a minute?

6 THE COURT: Yes. Yes, ma'am.

7 (Recess)

8 THE COURT: Back on the record. The
9 Court, after reviewing the entire record and looking at the
10 challenges for cause, have the parties reexamined their
11 position?

12 MR. SHOOK: We can agree, Judge.

13 MS. BUSBEE: We'll agree.

14 THE COURT: This one was close. The
15 Court will accept the agreement and discharge Ms. Johnson.
16 Ask her to come back in, please.

17 [Prospective juror in]

18 THE COURT: Ms. Johnson, come on up. We
19 want to thank you for your time and attention today in this
20 case and your thoughtful process of all the information that
21 you have been given.

22 But there's just too much going on
23 between today and tomorrow and other issues that we cannot
24 seat you on this jury, but thank you.

25 (Recess)

1 THE COURT: Next potential juror up will
2 be Gail Edward Duell. Let the record reflect the Court has
3 been informed that Mr. Duell has some issues concerning his
4 criminal history that he may or may not have made a full
5 disclosure on, on the Court's questionnaire, and in an
6 abundance of caution, I have appointed Melissa Owens,
7 attorney at law, to prepare Mr. Duell so he does not
8 incriminate himself in front of this Court.

9 And I've also been informed that the
10 parties have agreed to excuse him from jury service. But
11 the Court wanted to satisfy itself on the level of either,
12 A, misrepresentation, or, B, lack of understanding by
13 Mr. Duell when he answered these questionnaires on how
14 extremely important they are to make a disclosure.

15 Ms. Owens, have you had an opportunity to
16 talk with him and are you satisfied that he understands the
17 program?

18 MS. OWENS: Yes, Your Honor.

19 THE COURT: And, Mr. Wirskeye, she invited
20 you, also the prosecutors, to talk to him; is that correct?

21 MR. WIRSKYE: That's correct, Your Honor.

22 THE COURT: And do you have an opinion
23 for the Court?

24 MR. WIRSKYE: Based on my discussions
25 with Ms. Owens and discussions with the juror, I'm satisfied

1 to the extent there was a mistake, it was an honest mistake.
2 It wasn't anything intentional or willful misrepresentation
3 on the part of Mr. Duell.

4 THE COURT: Ms. Busbee?

5 MS. BUSBEE: I couldn't have said it
6 better. I agree with Mr. Wirskye.

7 THE COURT: Ask Mr. Duell to come in,
8 please.

9 [Off the record]

10 (Recess)

11 THE COURT: Timothy Yancey.

12 [Prospective juror in]

13 THE COURT: We have juror No. 1292,
14 Mr. Timothy C. Yancey. Mr. Yancey, is that pronounced
15 correctly?

16 PROSPECTIVE JUROR: Yes.

17 THE COURT: Have you had the opportunity
18 to read the orientation guide I have provided for you?

19 PROSPECTIVE JUROR: Yes.

20 THE COURT: You hear my printer going.
21 I'm printing out a copy of your jury questionnaire. The
22 attorneys are going to go over the questionnaire with you
23 and expand on some of your answers. The bottom line to this
24 interview, I will have two questions to ask. First question
25 is at the end of the process do you understand the law?

1 PROSPECTIVE JUROR: Yes.

2 THE COURT: Once you understand the law,
3 can you follow the law?

4 PROSPECTIVE JUROR: Yes.

5 THE COURT: That's the picture here. The
6 only question I have at this point before I let the lawyers
7 begin, will you be able to serve this Court for a period of
8 two weeks beginning on November 10th?

9 PROSPECTIVE JUROR: Yes.

10 THE COURT: There was a hesitation. You
11 had to think about that. So tell me what your problem is.

12 PROSPECTIVE JUROR: I have employees that
13 work for me. If I'm not there, they won't get to work, so
14 they will be out of work for that amount of time.

15 THE COURT: What business are you in?

16 PROSPECTIVE JUROR: Utility contractor.

17 THE COURT: Utility contractor. Now, I
18 understand how that goes. Are you saying that you would not
19 be able to line up work for them in advance and be able to
20 check on them?

21 PROSPECTIVE JUROR: I'm the competent
22 person on the job, so I have to be there or they don't get
23 to work.

24 THE COURT: You have to have a license,
25 you said?

1 PROSPECTIVE JUROR: Yes.

2 THE COURT: Everybody has to serve jury
3 duty.

4 PROSPECTIVE JUROR: Yes.

5 THE COURT: What do you do when you go on
6 vacation?

7 PROSPECTIVE JUROR: They usually take a
8 vacation the same time I do.

9 THE COURT: We're talking about November
10 10th. Is it possible for you to be able to schedule
11 vacation for that period of time?

12 PROSPECTIVE JUROR: I can try.

13 THE COURT: This is far enough out.
14 That's why I'm doing this so far out, so if you are chosen,
15 you can arrange your work schedules accordingly. I tell
16 people to schedule two weeks. I don't anticipate this will
17 be a full two weeks, but I have to be able to schedule it.

18 So it's like paying taxes. You don't
19 want to do it, but can you do it?

20 PROSPECTIVE JUROR: Yes.

21 THE COURT: Thank you.

22 MR. WIRSKYE: May it please the Court.

23 TIMOTHY YANCEY,
24 having been duly sworn, was examined and testified as
25 follows:

DIRECT EXAMINATION

BY MR. WIRSKYE:

Q. Mr. Yancey, how are you this afternoon?

A. Great.

Q. Thanks for bearing with us on a rainy afternoon. My name is Bill Wirskye and I'm the Assistant DA that will be visiting with you for the next few minutes, go over some of the information on your questionnaire that you were kind enough to give us, talk to you a little bit about what you think about the death penalty, and, finally, talk about maybe some of the laws and rules that apply in a case like this where the State is seeking the death penalty.

Just following up on what the Judge was talking to you about, how many people are in your crew that you have that work for you?

A. I have fourteen people.

Q. Fourteen?

A. Uh-huh.

Q. And if you weren't there, there would be at least a chance that those 14 people wouldn't be able to work for as long as you were out?

A. Very likely.

Q. Do you think with this much advance notice that you can schedule around it?

A. I can try. I will have to get somebody else

1 to try to do it, to take my place. Somebody has to be there
2 that is a competent person.

3 Q. Again, exactly what line of work -- you know,
4 you said utility.

5 A. We do utility work. We do water and sewer
6 lines and we dig ditches and there has to be somebody there
7 for the shore end comprehension safety of it.

8 Q. What do you do in your free time?

9 A. Hunt and fish.

10 Q. Have you done any dove hunting yet this year?

11 A. Yes, I would like to have went today, if the
12 rain hadn't come in.

13 Q. I woke up Monday, September 1st, and took a
14 look outside at 5:30 and went back to bed and I haven't been
15 back since. But I have put up a couple of feeders already
16 this year.

17 What do you think about maybe being a
18 juror in a death penalty case? What went through your mind
19 when you found out that you would have to come down for the
20 individual interview?

21 A. I wasn't pleased. That's a hard decision to
22 make.

23 Q. And you told us that, I guess, generally you
24 are in favor of the death penalty?

25 A. If you know without a doubt that they are

1 guilty, yes.

2 Q. You know, we kind of ask people in that
3 questionnaire to rank themselves as to how strongly they
4 believe in using the death penalty from 1 to 10, 1 being the
5 least and 10 being the most and you gave yourself a 6. And
6 that means different things to different people.

7 A. Right.

8 Q. But what were you thinking when you gave
9 yourself a 6?

10 A. Well, I'm for -- I'm not for feeding somebody
11 the rest of their life, if they are a menace to society. If
12 they are going to be that type of person, then save the
13 taxpayer some money.

14 Q. Is there a particular type of case that comes
15 to mind when you think about a good or an appropriate case
16 for the death penalty?

17 A. No.

18 Q. Okay. Any case you have heard about, read
19 about, know about, you think about that case?

20 A. Just when I see it on the news and forget
21 about it the day afterwards, you know.

22 Q. But no particular case comes to mind?

23 A. No.

24 Q. In Texas, as you may know -- I know you have
25 had a lot of time to look at the packet of law that we gave

1 you, but the death penalty is only reserved for murder cases
2 and then at that it's only reserved for a certain subset of
3 murder cases. It's got to be murder plus something else,
4 murder of a police officer, fireman on duty, a child under
5 six, or an intentional murder in the course of a robbery or
6 burglary and that type of thing.

7 A. Right.

8 Q. Is that something that is pretty well in
9 accord with what you believe?

10 A. Yes.

11 Q. Okay. If you were Governor of Texas for a day
12 and got to write the capital murder law we have, would you
13 expand the category of cases where it's available or shrink
14 it or think it's about right?

15 A. I think it's about right.

16 Q. Okay. Let me ask you this. When we talk
17 about the death penalty, I think most people think of the
18 death penalty, just using like a 7-Eleven robbery, for
19 example. One guy takes a gun in and goes up and holds up
20 that clerk at the 7-Eleven, maybe shoots him and doesn't
21 want to leave a witness, shoots him, takes the money, and
22 leaves.

23 Oftentimes crimes are committed by more
24 than one person. The law in Texas allows us in capital
25 murder all the way down to the smallest of crimes to

1 prosecute accomplices, people that also actively participate
2 in crimes. Like I said, that's the same way all the way up
3 to capital murder.

4 You may have a capital murder where more
5 than one person is involved. You may have a triggerman and
6 then you may have the nontriggerman or accomplices. And
7 depending on the facts and circumstances as to how actively
8 they participate in the crime, the law allows us to convict
9 someone of capital murder and pursue the death penalty
10 whether they were the triggerman or the nontriggerman.

11 And we talked to a lot of people and
12 there are a lot of people that feel very strongly about
13 using the death penalty, but they would draw the line and
14 they would just reserve the death penalty for the person
15 that actually caused the death, the triggerman. And when it
16 came to an accomplice, somebody that didn't actually pull
17 the trigger, they would say, you know, I may want to lock
18 them up for the rest of their life and punish them that way,
19 but I just don't feel the death penalty is appropriate for
20 those nontriggermen or those accomplices. What do you think
21 of that issue?

22 A. That's about the way that I think.

23 Q. Okay.

24 A. If you know who done it.

25 Q. Okay. If you could -- if you knew for sure

1 that this accomplice didn't pull the trigger, you just take
2 the death penalty off the table?

3 A. Yes.

4 Q. Okay. And we talked to a lot of people that
5 feel that way. What the law in Texas is, when you are
6 talking about accomplices, and I want to run this past you
7 and see what you think about it, there's two different ways
8 you can find an accomplice guilty. If the accomplice aids,
9 directs, solicits, or encourages another person like I do to
10 Mr. Shook, encouraged him to commit that capital murder,
11 then I'm just as guilty, even though I didn't pull the
12 trigger.

13 The other way they can be found guilty is
14 under the law of conspiracy. Let's say Mr. Shook and I
15 enter into an agreement or a conspiracy to commit bank
16 robbery. During the course of that bank robbery, Mr. Shook
17 is the triggerman, shoots and kills someone, the law says
18 that if I, the nontriggerman, should have anticipated that a
19 life would be taken, even though I didn't have any intent
20 that that person would lose their life, you know, I just
21 signed up for the bank robbery.

22 But if I should have anticipated, then I
23 could be found guilty and possibly receive the death
24 penalty. And it kind of sounds like it's in that last
25 section that maybe if you were Governor for a day, you would

1 have some disagreement with?

2 A. Yeah, very likely, yes.

3 Q. The person that doesn't have any intent, that
4 just signed up for the bank robbery --

5 A. Yes.

6 Q. And I'll be up front with you. The reason
7 we're talking about it right off the bat is this is a case
8 where we're prosecuting Mr. Murphy under that law of
9 accomplices as a nontriggerman. We're seeking the death
10 penalty. We think we have the type and quality of evidence
11 that will cause a jury to find him guilty as an accomplice
12 of capital murder and answer these questions in such a way
13 that he would receive the death penalty.

14 But, again, we talked to a lot of people.
15 And some people just couldn't do it as an accomplice. They
16 just disagree with that law. They may believe in it very
17 strongly for the triggerman, as you told us you do, but they
18 just couldn't do it for a nontriggerman or the accomplice,
19 that conspirator, that didn't have the intent.

20 And that's kind of what I hear you
21 saying; is that right?

22 A. Yes.

23 Q. Okay. Just couldn't give the death penalty
24 for an accomplice or nonshooter that didn't have the intent;
25 is that right?

1 A. Probably not.

2 Q. Okay. When you say probably not, you know,
3 we're lawyers. We -- it's easier for us to deal with yes or
4 no's and we know most people don't talk that way in your
5 regular life. You say probably or maybe or that type of
6 thing.

7 Kind of what I hear you saying is you
8 just couldn't do the death penalty for an accomplice; is
9 that right?

10 A. Yes.

11 Q. Okay. Fair enough. You told us, like a lot
12 of people we talked to, that you have heard something about
13 this case?

14 A. Yes.

15 Q. You know why you are down here. Everybody we
16 talk to, just about, has heard something about it. What do
17 you remember hearing about this case?

18 A. Um, I know it happened at the sporting goods
19 store. It was a robbery that went bad. It was seven
20 involved, not one. And all the rest of them have got the
21 death penalty, if I remember right.

22 Q. And sounds like you followed it a little bit
23 closer than some of the people. You have not only followed
24 the crime itself, but some of the court proceedings?

25 A. Yes.

1 Q. Some of the people we talked to that have had
2 that much knowledge tell us, very frankly, that that would
3 be hard to put out of their mind, that that may have some
4 effect if they were going to be a juror in this case. How
5 do you think -- what do you think about that?

6 A. Before I came here I just about had made my
7 mind up they were all about the same.

8 Q. Okay.

9 A. And I'm not hearing anything other than the
10 news.

11 Q. So you think that may have some effect on your
12 verdict, if you were selected to be a juror in this case?

13 A. It could, yes.

14 Q. Okay. Give me just a second, Mr. Yancey.

15 MR. SHOOK: Judge, I think the parties
16 have reached an agreement.

17 THE COURT: Thank you, Mr. Yancey.
18 Obviously, you have a lot of knowledge about this case, so
19 you don't need to worry about the November 10th issue. They
20 have agreed to let you go.

21 PROSPECTIVE JUROR: Okay.

22 THE COURT: Thank you, sir. Be careful.

23 [Prospective juror out]

24 THE COURT: Mr. Karwoski.

25 [Prospective juror in]

1 THE COURT: We have juror No. 1249, David
2 P. Karwoski. Is that pronounced correctly?

3 PROSPECTIVE JUROR: Uh-huh.

4 THE COURT: Mr. Karwoski, have you had
5 time to read the guide I provided for you at this point?

6 PROSPECTIVE JUROR: Yes.

7 THE COURT: Did you hear my printer
8 going? I'm producing a copy of your juror questionnaire and
9 they will refer to that and maybe explore some of your
10 answers in more detail on the issues we're going to be
11 discussing today.

12 The two large questions I need you to
13 answer at the end of the process are as follows, number one,
14 do you understand the law?

15 PROSPECTIVE JUROR: Uh-huh.

16 THE COURT: That's the major question
17 and, number two, if you understand the law, can you follow
18 the law?

19 PROSPECTIVE JUROR: Yes.

20 THE COURT: That's at the end of the day.
21 Here's a copy of your questionnaire. And before I begin,
22 the only question I have for you now, sir, is will you be
23 able to serve this Court for two weeks beginning on November
24 10th?

25 PROSPECTIVE JUROR: Yes.

1 THE COURT: With that I will turn it over
2 to Mr. Wirskye.

3 MR. WIRSKYE: May it please the Court.

4 DAVID KARWOSKI,
5 having been duly sworn, was examined and testified as
6 follows:

7 DIRECT EXAMINATION

8 BY MR. WIRSKYE:

9 Q. Mr. Karwoski, how are you?

10 A. Pretty good. You?

11 Q. Good. My name is Bill Wirskye. I'll be the
12 Assistant DA that will be visiting with you for the next few
13 minutes. Thank you for hanging in there with us and
14 spending the time going over, you know, the questionnaire
15 and all the law.

16 What I would like to do with you is go
17 over some of the information you were kind enough to give us
18 in your questionnaire, talk to you a little bit about your
19 thoughts and feelings about the death penalty, and then
20 maybe talk about some of the law that applies in a death
21 penalty case such as this.

22 A. Okay.

23 Q. Have you ever been on a jury before?

24 A. Yes.

25 Q. What type of jury was that?

1 A. It was a civil case, I believe.

2 Q. Okay. Was it here in Dallas County?

3 A. Yes.

4 Q. How was that experience for you?

5 A. It was good.

6 Q. Okay. What type of case was it, do you
7 remember?

8 A. It was a theft.

9 Q. Was it pretty clear-cut? The facts?

10 A. To some extent. It was a little questionable
11 until the very end.

12 Q. Okay. Did the jury have a difficult time
13 reaching a decision?

14 A. Yeah, pretty much.

15 Q. How long did y'all spend deliberating?

16 A. It was a couple of days' deliberation. It
17 just boiled down to one fact.

18 Q. Okay. And that was recently here in Dallas
19 County, right?

20 A. Yeah.

21 Q. How long did that case last?

22 A. I think it was two or three days, I think.

23 Q. So it wasn't that long a case?

24 A. No.

25 Q. Not as long as a two-week case --

1 A. No.

2 Q. -- that you may be down here on. Tell us what
3 you do for a living.

4 A. Um, I was an engineer at one point, then I
5 recently changed over to actually hold two positions. I'm a
6 web master and I support cadcam drafting and engineering
7 services.

8 Q. And looks like you moved to Texas here in '95?

9 A. Uh-huh.

10 Q. Did you move here job related?

11 A. Job and health related.

12 Q. Okay. Do you have health problems or --

13 A. Not currently.

14 Q. Okay. I notice on the last page you said that
15 you took an anti-rejection medicine?

16 A. Yeah.

17 Q. I hate to pry, but you understand we have to
18 ask these things.

19 A. No, that's okay. The main reason we moved
20 here was I have a blood disorder. And it's the cold
21 weather. Living in Illinois was really unbearable. So --

22 Q. How do you like Texas?

23 A. Much better.

24 Q. The particular disorder you have, do you think
25 it would cause you any problems at all sitting and serving

1 --

2 A. Oh, no.

3 Q. -- the two weeks?

4 A. No.

5 Q. Fair enough. You have told us, I guess in
6 theory, that you are generally in favor of the death
7 penalty; is that right?

8 A. Uh-huh.

9 Q. Could you tell us kind of why that is and what
10 purpose you think it serves in society?

11 A. Um, well, I believe, basically, that, you
12 know, if somebody takes a life, um, and it's a horrible
13 death, it's just, you know, I feel, yeah, that it is, you
14 know, permissible for that person, you know, to die for
15 that.

16 Q. Okay. I think you also told us in your
17 questionnaire on the first page that you believe that
18 although religiously it's a struggle for you --

19 A. It is, uh-huh.

20 Q. Can you expand on that just a little bit?

21 A. Um, I mean, basically, I mean, it's, um, you
22 know, you are not supposed to -- a life isn't supposed to be
23 taken. Um, but, you know, like I say, there again, it is a
24 struggle. I mean, you know -- you know, it's an eye for an
25 eye. So, you know, where do you draw the line? I mean, you

1 know, our church doesn't make -- give any grounds for making
2 that type of decision.

3 Q The reason we ask, obviously we know that this
4 particular type of case, the death penalty involved, and
5 this type process isn't for everyone. And we certainly, I
6 think neither side wants to put somebody over in the jury
7 box that's -- comfortable is a bad word, but --

8 A. It isn't going to make a fair decision.

9 Q. Yeah. That we don't want to jam you up and
10 put you in a hard spot with your religious beliefs and your
11 conscience, that type of thing and that's why we ask the
12 questions.

13 But do you think at least at this point
14 this is something that you would be able to participate in?

15 A. Yeah.

16 Q. Okay. Let me follow up a little bit more on
17 that. Is there a particular type of case that comes to mind
18 when you think about an appropriate case for the death
19 penalty?

20 A. No, not offhand. I mean, to me every case,
21 you know, needs to be weighed fairly.

22 Q Okay. Any case you may have heard about in
23 the media that comes to mind, what you know about it, you
24 think, you know, that's a good example of maybe where they
25 need the death penalty, that type of thing?

1 A. Not right offhand. I don't think of one right
2 offhand.

3 Q. Okay. You probably had a chance to read that
4 packet of law?

5 A. Uh-huh.

6 Q. In Texas the death penalty is only available
7 for murder and then at that only a small subset, a
8 particular type of murder. It has to be murder plus some
9 other aggravating factor, murder of a police officer,
10 fireman on duty, child under six, murder in the course of
11 one of those other felonies, robberies, burglary, that type
12 of thing.

13 Is that something that you are generally
14 comfortable with, the scheme that we have in Texas?

15 A. Yes.

16 Q. Okay. Let me kind of take you to the next
17 level with you. We talk to a lot of people, such as
18 yourself I guess, who philosophically are in favor of the
19 death penalty that maybe struggle with it a little on
20 religious grounds.

21 And when we visited earlier just a few
22 minutes ago, you said it would be justified when a person
23 took a life.

24 A. Uh-huh.

25 Q. I want to follow up on that point with you

1 just a bit. You know, oftentimes crimes are not committed
2 by just one person. You could have groups and gangs of
3 people that commit crime. The law allows us to prosecute
4 everyone that was an active participant in a crime, anywhere
5 down from the lowest misdemeanor all the way up to capital
6 murder and the death penalty case. And, obviously, when
7 we're talking about something like a capital murder, you may
8 have one person that's actually the triggerman that pulled
9 the trigger and actually took the life and, of course, they
10 could be convicted of capital murder and potentially
11 sentenced to death.

12 But a lot of people, even people who are
13 very strongly in favor of the death penalty, kind of draw a
14 line at that point and treat them differently or see them
15 differently than they do the accomplices. It's a word you
16 commonly hear, the nontriggerman, the people that were
17 actively involved in the case but didn't take the life.

18 And when it comes to those people quite a
19 few people tell us, very frankly, I may want to punish them,
20 I may want to lock them up for the rest of their life and
21 get them off the street, but they didn't actually take a
22 life and I just -- I don't think the death penalty is
23 appropriate for those accomplices. They didn't actually
24 pull the trigger. They didn't actually cause the death.
25 What do you think about that?

1 A. To me it depends on the law.

2 Q. Okay.

3 A. Um, obviously, we're here to make a decision
4 based on the law. If I feel that that accomplice, you know,
5 if he broke the law and the death penalty applies, then, you
6 know, then he needs to be -- to get his, you know, his
7 sentence.

8 Q. Okay. If we made you Governor of Texas for a
9 day and you could --

10 A. Those are big shoes.

11 Q. I don't think you are eligible. You have to
12 be a native Texan, I think. But if we made you Governor of
13 Texas for a day and you could write the capital murder
14 statute, would you have the option of the death penalty
15 available for those accomplices?

16 A. I think so.

17 Q. Okay. What the law is, very frankly, is, you
18 know, if I say Mr. Shook and I commit a crime and he commits
19 capital murder and I encouraged, directed, solicited, or
20 aided him to commit that capital murder, I'm just as guilty.
21 I could be convicted of capital murder and I could
22 ultimately face the death penalty. And that makes sense, I
23 think, to a lot of people and I think that's what a lot of
24 people think of when they think of the accomplice-type
25 scenario.

1 There's also a different way for a
2 nontriggerman to be found guilty of capital murder and face
3 the death penalty and it's under the law of conspiracy. And
4 let me explain that to you.

5 Mr. Shook and I decide to commit a bank
6 robbery. We agree or we conspire to commit that bank
7 robbery. And Mr. Shook is the person that actually takes
8 the gun and causes the death. I don't cause the death.
9 Maybe I just collect the money, that type of thing. We're
10 caught and charged with capital murder, and if -- and the
11 law is if I should have -- if the accomplice should have
12 anticipated that a life could be taken during that robbery,
13 then I could be found guilty, even though I didn't have any
14 intent that anyone would get hurt, even though I just kind
15 of signed up for a bank robbery.

16 If the jury finds that I should have
17 anticipated that a life would be taken, then I could be
18 found guilty of capital murder and potentially face the
19 death penalty. What do you think about a scenario like
20 that, the law of conspiracy, that second way for an
21 accomplice?

22 A. Again, I kind of struggle with that, too. But
23 to me if you're going into something where you know that the
24 possibility, you know, of death is there, to me you are
25 going in with that mindset and you should be able to be

1 sentenced accordingly.

2 Q. Okay. You think if you were selected to serve
3 as a juror that you could follow that law?

4 A. Yes.

5 Q. And I'll be very frank with you and lay our
6 cards on the table. We're prosecuting Mr. Murphy under that
7 theory, that theory of an accomplice or nonshooter. That's
8 why we spend so much time talking with jurors to make sure,
9 number one, that you understand the law, and, number two,
10 you can follow it.

11 Very frankly, it wouldn't be fair to
12 either side if we put someone on the jury that didn't
13 believe in the law and couldn't follow it, because they
14 didn't believe it.

15 A. Sure.

16 Q. And it sounds like you wouldn't have any
17 issues or qualms about that part of the law?

18 A. No.

19 Q. Okay. Like almost everybody we talk to in
20 these cases, you have indicated that you knew something
21 about the case; is that right?

22 A. (Prospective juror nods head.)

23 Q. What do you remember hearing about these
24 cases?

25 A. Just the little bit that I heard on the TV,

1 just the fact that the seven came in and had escaped from
2 prison and that Officer Hawkins was at the scene and was
3 killed. That is about as much as I know.

4 Q. Did you follow the other proceedings after
5 that, the capture, arrest, or anything like that?

6 A. No.

7 Q. Have you followed any of the court proceedings

8 --

9 A. No.

10 Q. -- that have gone on? Okay. Based on what
11 you know about the case already, how do you think that might
12 affect you, if you were picked to be a juror in this case?

13 A. Um, it shouldn't affect me at all.

14 Q. Okay. And I think that's what the law
15 contemplates. We obviously don't need to find twelve people
16 that haven't heard a thing about the case. We need to find
17 twelve people that can base their verdict just based on what
18 they hear in the courtroom, that type thing.

19 A. Okay.

20 Q. We also ask you before I move on, a couple of
21 other questions on your questionnaire. You have it in front
22 of you; is that right?

23 A. Uh-huh, yes.

24 Q. Let me ask you to turn maybe to page 5. See
25 about halfway down the page we ask all these -- we give you

1 all these statements and ask if you agree, disagree.
2 Sometimes I question how helpful they are because these
3 things mean different things to different people, but
4 sometimes they serve as a basis for us to talk about
5 something.

6 But that very first one says most
7 criminals are actually victims of society's problems. And
8 you marked that you would agree with that statement. I'm
9 just kind of curious what you were thinking when you marked
10 that?

11 A. I believe was that -- my thinking was that,
12 you know, as you grow up, you know, what you learn, what you
13 see around you, is kind of, you know, what you form your
14 decisions and your thoughts on.

15 Q. Okay. And also the very last one, it says
16 criminal laws treat criminal defendants too harshly and you
17 put you disagreed. And I just kind of wanted to follow up
18 and see where you come down on that, I guess just generally
19 what you think about our system and how we punish people.
20 What are your thoughts on that?

21 A. I think oftentimes it's -- it's fair, but I
22 think there are a lot of times, too, where people get away
23 with not enough.

24 Q. Okay. You also mention, I think, on the next
25 page that you have a good friend, I guess at church, who is

1 an attorney?

2 A. Uh-huh.

3 Q. We're always curious to know if anybody knows
4 any attorneys in the criminal system or anybody we know or
5 anything like that.

6 A. No, I think he's a title attorney and that
7 type of an attorney, yeah.

8 Q. Let me ask you. I know you got a chance to
9 read the law, these three Special Issues that we ask jurors
10 in a case like this, I think they are phrased a little
11 differently up on the wall. If you could take a minute or
12 two and just read those to yourself and we'll talk about
13 them in just a minute.

14 A. (Prospective juror complies.)

15 MR. WIRSKYE: Your Honor, could we
16 approach while the juror is reading that?

17 THE COURT: You may.

18 (Bench conference)

19 Q. (By Mr. Wirskye) You may have lucked out.

20 MR. WIRSKYE: That's all the questions I
21 have.

22 THE COURT: Any questions, Ms. Busbee?

23 MS. BUSBEE: No, we have reached an
24 agreement.

25 THE COURT: Mr. Karwoski, I thank you for

1 your time and attention today, but the parties have agreed
2 you are not going to sit on this jury. Thank you, sir.

3 [Prospective juror out]

4 THE COURT: We have juror No. 1315,
5 Victoria Thompson; is that correct, ma'am?

6 PROSPECTIVE JUROR: That's correct.

7 THE COURT: Ms. Thompson, have you had an
8 opportunity to read the guide that I provided for you?

9 PROSPECTIVE JUROR: Yes.

10 THE COURT: That's a lot of law to lay on
11 someone and the attorneys will go over it in more detail, so
12 you can understand how it all relates. And you hear my
13 printer going. I'm providing a copy of your questionnaire,
14 so if they want to have you expound on a question, you will
15 be able to look at your answer that you gave us in May and
16 refer to that.

17 Then at the end of the process I have two
18 questions that I must answer. Number one is, do you
19 understand the law?

20 PROSPECTIVE JUROR: Yes.

21 THE COURT: We'll find out in a few
22 minutes, if that's true. And, number two, once you
23 understand the law, can you follow the law? That's the big
24 picture for me. Only question I have for you at this time
25 is will you be able to serve this Court for a period of two

1 weeks beginning on November 10th?

2 PROSPECTIVE JUROR: It would be a little
3 difficult in the job situation that I have.

4 THE COURT: And what is your job
5 situation?

6 PROSPECTIVE JUROR: I'm the manager of
7 the clinics at Baylor College of Dentistry.

8 THE COURT: And when you say manager of
9 the clinics, I know they have more than one person over
10 there that works at Baylor College, so if you had to -- if
11 you go on vacation somebody covers for you, correct?

12 PROSPECTIVE JUROR: I haven't had a
13 vacation in ten years, so -- because I don't have anyone to
14 really cover for me for more than a day or two at a time.

15 THE COURT: You would be able -- we work
16 very normal hours -- just, you know, despite a long lunch,
17 you would have opportunity to use the phone during the day.
18 We work -- you can go to the office in the evening. You
19 wouldn't be sequestered.

20 So, you know, it would be an imposition
21 on you, but it sounds like you would be able to work around
22 it.

23 PROSPECTIVE JUROR: If I had to. I
24 wouldn't really want to, but if I had to.

25 THE COURT: I know you don't want to.

1 Nobody likes being on jury duty or paying taxes or anything
2 like that.

3 MS. BUSBEE: Your Honor, could we
4 approach for a minute?

5 THE COURT: You may.

6 (Bench conference)

7 THE COURT: Taxes, and nobody likes
8 dealing with that or jury duty. It's just one of those
9 things that as a citizen of a free country, it's -- you are
10 called upon and unless you are going to go fight for us in
11 Iraq, this is about the next best thing that you can do for
12 your country.

13 Along those lines, do you have any
14 medical reason why you would not be -- we usually work about
15 an hour and a half in a block. I drink a lot of water and
16 in about an hour and a half I take a break. Would that be a
17 problem?

18 PROSPECTIVE JUROR: Um, sometimes in the
19 mornings I have to take diuretics, so I have to go
20 frequently. Usually by lunchtime I'm okay. But sometimes
21 in the morning I have to go about every hour, so --

22 THE COURT: If it -- obviously, if we're
23 in trial and you have a problem, raise your hand and we'll
24 take a break. If it's not like every ten minutes, then it's
25 not a problem. Mr. Shook, would you like to inquire?

1 MR. SHOOK: May it please the Court.

2 VICTORIA THOMPSON,

3 having been duly sworn, was examined and testified as
4 follows:

5 DIRECT EXAMINATION

6 BY MR. SHOOK:

7 Q. Ms. Thompson, my name is Toby Shook. I will
8 speak to you on behalf of the State. And as the Judge said,
9 we just want your honest opinions. There aren't any right
10 or wrong answers. You have been very honest on your
11 questionnaire, so I don't think that we have a problem with
12 you along those lines.

13 You seem like a person that tells us what
14 is on your mind and will give us your honest opinions. I
15 want to follow up on your work issues. I was just looking
16 over again on your questionnaire and it looks like you do a
17 lot of different things at the clinic.

18 A. Yes, I do.

19 Q. And you have really not had an extended
20 vacation for the past ten years?

21 A. No, I have not.

22 Q. So the most you have taken off is maybe a day
23 here, a couple of days there?

24 A. Yes, sir.

25 Q. All right. The bottom line on the law is

1 this. Obviously, we don't have business excuses or we
2 wouldn't get anyone. But the test is basically this, and
3 only you will be able to tell us this. In November, as far
4 as you know what's going on then with your work, if you were
5 placed on the jury for a two-week period -- as the Judge
6 said, he's very good on his hours. It will be business
7 hours, but you will have to be here during the day. If you
8 missed that two-week period, would that -- would you be able
9 to concentrate on the evidence and the witnesses, give the
10 case your full attention?

11 The reason I ask you that is when people
12 are in your situation, some people can tell us, I can, I
13 just have to work later hours at night, but I think that I
14 can do it. Other jurors have told us, no, I would be
15 thinking about what is going on at work because of that
16 particular time or what's going on and I couldn't give the
17 case my full attention.

18 But the bottom line is that. Of course,
19 the only person that can really tell us that is yourself.
20 And we just depend on your answers on that. Would it be a
21 situation if you were placed on the jury, that your
22 concentration might wane or would you be able to give the
23 case your full attention?

24 A. Well, I would like -- I would like to say that
25 my concentration would wane, but I have to be honest with

1 you and say that I would give my full attention to
2 everything that I do.

3 Q. Okay. Now, let me talk to you about a couple
4 of other areas. One is we asked if anyone has ever been a
5 victim of a crime and you had said on your questionnaire
6 that you, yourself, actually had been in the past?

7 A. Yes. My home was burglarized.

8 Q. Okay. When did that happen?

9 A. That happened in -- I'm trying to think. The
10 mid to late '80s. I can't give you a definite date, it's
11 been so long.

12 Q. Anyone ever caught on that?

13 A. No.

14 Q. Okay. Another area you talked about was that
15 at some point in time you were a battered spouse?

16 A. Correct.

17 Q. Was that case -- how long ago was that?

18 A. It never went to trial. It was never
19 reported.

20 Q. Okay. I know that they're reported more often
21 now, but there was a time when the police were hardly ever
22 called to those situations.

23 A. I left in 1980.

24 Q. Okay. So we're talking 20 years ago or over
25 20 years?

1 A. Correct.

2 Q. Is that an occurrence that happened on more
3 than one occasion?

4 A. The battering?

5 Q. Yes.

6 A. It was constant.

7 Q. Okay.

8 A. Yes.

9 Q. Going through that as a victim, do you think
10 that might affect you as a juror in a case involving a
11 violent crime?

12 A. No.

13 Q. And why is that?

14 A. Because I try to be an honest and fair person
15 in every judgment that I make and in every way that I
16 perceive a person. I realize that all men don't batter
17 their wives. And, you know, it's an individual thing.

18 Q. Okay. Let me ask you how you feel about the
19 -- there was one other, before I get into the -- you had a
20 name down here about a Michael Sanchez who was serving a
21 murder case, I believe, 15 years in prison?

22 A. Correct.

23 Q. What is your relationship to that person?

24 A. Michael Sanchez is the brother of my
25 daughter-in-law.

1 Q. Okay. And did you know him very well?

2 A. I did not know him real well. I will tell you
3 that I have sent him a Christmas card because I feel sorry
4 for him because he's in prison, so I send him a Christmas
5 card every year. It was a crime of passion and, you know,
6 the whole family suffered because of it.

7 Q. Who was the victim in that case?

8 A. I believe it was his girlfriend. I didn't
9 know her at all.

10 Q. Do you know what the facts were or why the
11 crime occurred?

12 A. Yes.

13 Q. What was that?

14 A. Um, supposedly she had taken all of his items,
15 his furniture, everything, moved in with another man. And
16 when he went to get it, the two men got into a
17 confrontation. Apparently he pulled a gun. I wasn't at the
18 trial. I'm just telling you.

19 Q. What you heard?

20 A. He pulled a gun, fired at the man, and the
21 bullet ricocheted and killed his girlfriend. I believe the
22 man is also crippled because of it today.

23 Q. Okay. Do you think he was treated fairly by
24 the judicial system --

25 A. I would assume so, I mean.

1 Q. -- from what you know about him?

2 A. He went in with a gun.

3 Q. Okay. Now, you know that this is a death
4 penalty case, one in which the State is seeking the death
5 penalty. So we want to ask every juror how they feel about
6 the death penalty. Are you in favor of it as a law?

7 A. Yes, I am.

8 Q. Why do you favor it as a law?

9 A. Um, it's difficult to answer that as a yes or
10 a no for me because I believe that there are circumstances
11 where I do favor it and circumstances where I don't.

12 Q. What circumstances do you favor it in?

13 A. You know, if it's a murder of a child, you
14 know, I am very much in favor of the death penalty on a
15 murder of a child. If it's a murder involving someone who's
16 defenseless, no matter what their age, I believe there
17 should be a death penalty. But, then again, you know, I'm
18 faced with my daughter-in-law's brother and we would hate
19 for him to go to the chair, but that's not my decision.

20 Q. Okay. What cases are you not in favor of the
21 death penalty or can you give us examples of that?

22 A. Um, I would say, for instance, if two people
23 were in a fight and one of them killed another one, maybe
24 under some circumstances maybe that wouldn't be a death
25 penalty, perhaps just a life sentence or something.

1 Q. Okay. Now, you have reviewed that packet and
2 you have seen the indictment, no doubt, which alleges a
3 murder, capital murder, two ways. One is the murder of a
4 police officer on duty and the other is a murder during the
5 course of a robbery.

6 A. Correct.

7 Q. From your personal point of view, do you feel
8 those types of cases could be death penalty cases?

9 A. Yes.

10 Q. Okay. Why is that?

11 A. I truly believe that if you enter a place to
12 burglarize it and you have a weapon, I feel like, you know
13 going in there that something may happen that you may have
14 to use that weapon.

15 Q. Okay. And in Texas there's only certain
16 crimes that are reserved for the death penalty. Those are
17 covered in the packet and some are ones that you brought up,
18 at least the murder of a child-type situation.

19 The next area I want to get into has to
20 do with what we call the law of parties. You know, when we
21 talk about the death penalty, generally we think of the
22 person that actually caused the death. The law says that if
23 you help commit any crime, including capital murder, you can
24 be held accountable for those crimes, also.

25 If I assist Mr. Wirskey or he assists me

1 in a capital murder, if he's actively involved in the crime,
2 then we can both be prosecuted for the crime. An example we
3 use is if more than one person commits a bank robbery. We
4 agree to go in there, but I'm going to be the gunman. He's
5 going to be the guy that gathers up the money. We carry out
6 that plan. And during the middle of the robbery, I start
7 shooting people. We leave. We're arrested and caught.

8 I can obviously be prosecuted because I'm
9 the triggerman in the situation. But under the law if he's
10 actively involved in the case, he, too, can be arrested and
11 prosecuted and could ultimately receive the death penalty.
12 Some people -- what we like to do is ask you, get your gut
13 reaction to that, because we have some folks who tell us
14 they are in favor of the death penalty, but they are only in
15 favor of the death penalty for the actual triggerman. And
16 if it comes down to an accomplice or nontriggerman party
17 helping, they reserve some other punishment for him. They
18 don't think that's fair, maybe a life term in prison or
19 less, but not a death penalty situation. Other jurors tell
20 us they agree with that law and do think these accomplices
21 should be prosecuted for the death penalty.

22 How does that strike you as far as the
23 situation of an accomplice or nontriggerman?

24 A. If the accomplice knows that you are both
25 going in there, that there's a weapon involved, then I think

1 they are both guilty.

2 Q. Okay. Do you agree, then, that the accomplice
3 should be prosecuted for the death penalty and could
4 ultimately receive the death penalty, depending on the
5 facts?

6 A. Yes.

7 Q. All right. Let me get into the kind of scheme
8 of how the trial works. It's divided into -- have you been
9 down on a jury trial before and --

10 A. Just civil.

11 Q. Okay. And in a criminal trial the trial is
12 divided into two parts. The first part is the
13 guilt/innocence stage where we have to prove that
14 indictment. If we don't do that, obviously, it would be a
15 not guilty and we would go home.

16 And then if you found him guilty, we go
17 to the second phase, which is the punishment phase. In that
18 phase of the trial you may hear additional evidence and then
19 you get these questions, which we'll go over in more detail.

20 Basically, the questions ask this, did
21 the State prove that he's a continuing danger to society?
22 Did they prove that he intended or anticipated that a death
23 would occur? And is there sufficient mitigating evidence
24 that you think a life sentence should be imposed rather than
25 a death sentence?

1 If you answer the questions yes, yes, and
2 no, the Judge has no choice. He has no discretion. He
3 would sentence the defendant to death. If you answer them
4 any other way, it would be a life sentence. But those are
5 the only two choices once the defendant has been found
6 guilty of capital murder. Is that clear to you?

7 A. Yes.

8 Q. There is one area on your questionnaire I
9 forgot to go over.

10 A. Okay.

11 Q. That is the fact that -- and I don't know what
12 the situation is now, but your mother had a stroke recently
13 when you filled this out and you at that time were having to
14 check on her pretty frequently?

15 A. Uh-huh.

16 Q. Is that still the same situation?

17 A. I still check on her daily, usually in the
18 evenings after I go home from work.

19 Q. Okay. Do you think that situation may cause
20 you distraction on the jury if something, well -- is her
21 condition stable right now?

22 A. Right now it is, yes.

23 Q. Our concern, obviously, is if you want to,
24 obviously, going to attend to your mother --

25 A. Uh-huh.

1 Q. -- and you might be thinking about her at this
2 point in time in your life. Is that going to be a bit of a
3 distraction to you, do you think, if you were placed on the
4 jury?

5 A. As the situation is right at this moment, no.
6 But with a stroke, you never know.. If something happened
7 tomorrow, I'm not going to sit here and tell you that I
8 wouldn't be distracted. But at this point she's stable and
9 it's not distracting me.

10 Q. Okay.

11 MR. SHOOK: Could we approach the bench,
12 Judge?

13 THE COURT: You may.

14 (Bench conference)

15 MR. SHOOK: That's all the questions we
16 have.

17 THE COURT: Ms. Busbee?

18 MS. BUSBEE: I believe the parties have
19 reached an agreement on juror No. 1315.

20 THE COURT: Ms. Thompson, as you just
21 heard Ms. Busbee, you know, maybe one thing doesn't push
22 somebody this way or -- but you have a lot of things and
23 with your job and your mother and health and so forth,
24 there's just so many things going on, this is probably not
25 the right case for you, so they have agreed to excuse you

1 from jury service.

2 [End of Volume]

3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

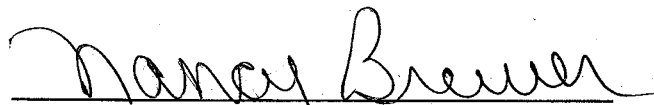
1 STATE OF TEXAS *

2 COUNTY OF DALLAS *

3 I, NANCY BREWER, Official Court Reporter for the 283rd
4 Judicial District Court, do hereby certify that the above
5 and foregoing constitutes a true and correct transcription
6 of all portions of evidence and other proceedings requested
7 in writing by counsel for the parties to be included in this
8 volume of the Reporter's Record, in the above-styled and
9 numbered cause, all of which occurred in open court or in
10 chambers and were reported by me.

11 WITNESS MY OFFICIAL HAND on this the 4 day of

12 March, 2004.

13
14 

15 NANCY BREWER, CSR, NO. 5759
16 Expiration Date: 12-31-04
17 Official Reporter, 283rd JDC
18 Frank Crowley Crts. Bldg. LB33
19 133 No. Industrial Blvd.
20 Dallas, TX 75207
21 (214) 653-5863
22
23
24
25